

Exhibit C

A90308E
RONALD B. KEMNITZER **MARCH 26, 2015**

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

LISA DUER,	:	
Plaintiff,	:	CIVIL ACTION
	:	FILE NO.
vs	:	
	:	14-cv-01589-ELR
BENSUSSEN DEUTSCH &	:	
ASSOCIATES, INC.; ELI	:	
LILLY AND COMPANY,	:	
	:	
Defendant.	:	
	:	

VIDEOTAPED DEPOSITION OF

RONALD B. KEMNITZER

ROANOKE, VIRGINIA

MARCH 26, 2015

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1	APPEARANCES:	1	ROANOKE, VA; THURSDAY, MARCH 26, 2015; 8:34 a.m.
2	FOR THE PLAINTIFF:	2	
3	FLYNN PEELER PHILLIPS	3	THE VIDEOGRAPHER: I am Lisa Whitaker, your
4	BY: CHARLES E. PEELER	4	videographer, and I represent Atkinson-Baker in
5	517 West Broad Avenue	5	Glendale, California. 08 : 34 : 43
6	Albany, GA 31701	6	The date is March 26th, 2015. The time is
7	229.446.4886	7	8:34 a.m. This deposition is taking place at Hotel
8	cpeeler@fpplaw.com	8	Roanoke and Conference Center, 110 Shenandoah Avenue
9	FOR THE DEFENDANT BENSUSSEN DEUTSCH & ASSOCIATES, INC.:	9	Northeast, Roanoke, Virginia.
10	SEED IP	10	This is Case No. 14-cv-01589-ELR, entitled 08 : 34 : 59
11	BY: MICHAEL P. HOGAN	11	Duer versus JBDA and Eli Lilly. The deponent is Ronald
12	701 Fifth Avenue, Suite 5400	12	Kemnitzer. This deposition is being taken on behalf of
13	Seattle, WA 98104	13	the defendant.
14	206.694.4819	14	Your court reporter is Cece Brookman, from
15	mikeh@seedip.com	15	Atkinson-Baker. 08 : 35 : 22
16	FOR THE DEFENDANT ELI LILLY AND COMPANY	16	Will the attorneys please introduce
17	FINNNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER,	17	themselves.
18	LLP	18	MR. PEELER: My name is Charlie Peeler, and
19	BY: L. SCOTT BURWELL	19	I represent the plaintiff.
20	Two Freedom Square	20	MR. HOGAN: Michael Hogan from Seed IP in
21	11955 Freedom Drive	21	Seattle, on behalf of defendant Bensussen Deutsch &
22	Reston, VA 20190	22	Associates, Inc, or BDA.
23	571.203.2700	23	MR. BURWELL: Scott Burwell from Finnegan,
24	scott.burwell@finnegan.com	24	on behalf of defendant Eli Lilly and Company.
25	ALSO PRESENT:	25	MS. PALMBERG: Arleen Palmberg, Eli Lilly
		Page 2	Page 4
1	I N D E X	1	and Company.
2	WITNESS: RONALD B. KEMNITZER	2	
3	EXAMINATION	3	RONALD B. KEMNITZER,
4	By Mr. Hogan	4	having been sworn by the Registered Professional
5	By Mr. Peeler	5	Reporter, Cecelia Brookman, to tell the truth, the whole
6	By Mr. Hogan	6	truth, and nothing but the truth, testified as follows:
7		7	
8	E X H I B I T S	8	EXAMINATION
9		9	BY MR. HOGAN:
10	NUMBER	10	Q. Good morning, sir. 08 : 35 : 58
11	DESCRIPTION	11	A. Good morning.
12	PAGE	12	Q. Could you please -- well, before we start, I want
13		13	to -- Charlie, we have an upcoming briefing deadline for
14	K-1 Listing of material reviewed by	14	responsive marketing briefs. Can I have a promise from
15	Mr. Kemnitzer	15	you that we'll get a signed errata within two weeks of
16	17	16	his deposition? 08 : 36 : 11
17	K-2 Notice of subpoena for deposition	17	MR. PEELER: I don't know when I'm going to
18	25	18	get the transcript, Mike, so how can I promise that?
19	K-3 Copy of web site for Mr. Kemnitzer	19	MR. HOGAN: We can order them within a week
20	29	20	today. 08 : 36 : 23
21	K-4 Plaintiff Lisa Duer Opening Claim	21	MR. PEELER: A week turnaround? I'll talk
22	Construction Brief	22	to Ron about it.
23	43	23	MR. HOGAN: We can get the transcript
24	K-5 Declaration of Mr. Kemnitzer	24	probably in a week or probably three days. Depends if
25	43	25	we talk to the reporter. All I'm saying is we would
	K-6 United States Patent		08 : 36 : 33
	48		
	K-7 United States Patent and Trademark		
	Office Issue Notification		
	56		
	K-8 Copy of pages from dictionary		
	138		
		08 : 34 : 36	
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1 like -- I think we're entitled to a corrected transcript 2 before the next set of briefing is due. That's what I'm 3 asking for.	1 MR. PEELER: And then also I want to note 2 for the record that this deposition is limited to claim 3 construction issues.
4 MR. PEELER: I'll talk to Ron about it, see 5 what his schedule is. 08:36:45	4 MR. HOGAN: Agreed.
6 MR. HOGAN: Okay. We'll visit that later, I 7 think, before we're done today.	5 BY MR. HOGAN: 08:38:24
8 BY MR. HOGAN:	6 Q. Okay. Sir, would you please give me your name and address.
9 Q. Sir, is there any reason you're unable to testify completely and truthfully today? 08:37:03	7 A. Ronald B. Kemnitzer. I reside at 2103 Grandin 8 Road Southwest, Roanoke, Virginia.
10 A. No.	9
11 Q. You're not currently on any medication?	10 Q. Grandin? 08:38:35
12 A. No.	11 A. Grandin, G-r-a-n-d-i-n.
13 Q. You haven't been drinking this morning?	12 Q. Could you just briefly give me your educational background.
14 A. No. 08:37:10	13 A. I have an undergraduate degree in industrial 15 design from the University of Cincinnati. I have a 08:38:57 16 master's degree in design from Northern Illinois 17 University.
16 Q. Okay. You've been deposed before, I gather?	18 Q. Anything further? That's all?
17 A. Yes.	19 A. A partial study for master's in business 20 education, business administration. 08:39:23
18 Q. Okay. So just real quick ground rules. I'm going to ask you some questions today.	21 Q. Did you complete that?
19 A. Uh-huh. 08:37:19	22 A. No, I did not.
20 Q. If you don't understand the question, please ask me to repeat it; I'm happy to do that. If you don't understand it for any reason, any word -- I speak quickly sometimes. If you didn't get it, just tell me to repeat it, I'm happy to do that. Okay? 08:37:29	23 Q. Where was that?
21	24 A. Loyola College, Baltimore, Maryland, and Chicago.
22	25 Q. I'm going to ask you some background questions 08:39:38
23	Page 6 Page 8
1 A. Okay.	1 that are necessary for a deposition, nothing personal.
2 Q. If you answer the question, I'm assuming you understood the question as asked, or we'll clarify it.	2 Have you ever been convicted of a crime, sir?
3	3 A. No, other than minor traffic offenses.
4 Is that fair?	4 Q. We're not counting those.
5 A. Okay. 08:37:37	5 A. Okay. 08:39:50
6 Q. If you want to take a bio break, you're certainly entitled to do that. I would just ask that if we have a question pending or awaiting an answer, I get an answer and then we do a break after that. Is that fair?	6 Q. Ever been excused from an academic post you've ever held?
7	7 A. No.
8	8 Q. Ever been accused of academic or other ethics violations? 08:40:00
9	9 A. No.
10 A. Okay, that's fair. 08:37:48	10 Q. What's your current employment?
11 MR. PEELER: Let me just ask you, we're 12 going to reserve all objections except for those to the 13 form of the question and responsiveness of the answer.	11 A. I'm retired. I'm retired with a title of 12 professor emeritus. So technically speaking, I'm 13 retired, but I still have, I guess, a formal association 14 with the university. 08:40:15
14 Is that agreeable?	15 Q. That's Virginia Tech?
15 MR. HOGAN: I just think we're going to 16 follow federal rules. I figure, if you have a form --	16 A. Virginia Tech. Virginia Polytechnic Institute 17 and State University.
17 MR. PEELER: That's what they say, unless 18 you have a different understanding of them.	18 Q. Virginia Tech is okay, for our purposes? 08:40:31
19 MR. HOGAN: I'm going to follow federal 20 rules. 08:38:10	19 A. Virginia Tech is fine.
21 MR. PEELER: Is that your understanding of 22 them?	20 Q. Okay. As professor emeritus, do you have space at the university still?
23 MR. HOGAN: I'm not going to say your 24 understanding is correct or incorrect. I'm saying the 25 federal rules will control here. 08:38:16	21 A. I do.
	22 Q. So you have an office? 08:40:39
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1	A. Yes.	1	evenly split.
2	Q. Do you go in every day?	2	Q. So you were a teacher -- let me back up -- a
3	A. No.	3	professor at Virginia Tech; right?
4	Q. Once a week?	4	A. Yes.
5	A. Once or twice a semester.	5	Q. How long did you do that for?
6	08:40:44	6	A. I was with Virginia Tech for 10 years.
7	Q. Okay. You don't teach any classes, do you?	7	Q. During that time at Virginia Tech, did you teach
8	A. I taught a class in the fall semester this	8	classes?
9	academic year, one class. They met one day a week.	9	A. Yes.
10	Q. Fall 2014?	10	Q. Did you teach any classes dealing with patent law
11	A. Uh-huh.	11	or patent issues?
12	08:41:08	12	A. Those issues are a part of our curriculum, part
13	Q. Do you teach anything now?	13	of our studio curriculum. There are five years of --
14	A. No.	14	four years of studio classes titled industrial design
15	Q. You're not on the advisory board of any students?	15	studio. And we cover patent issues in all of those
16	A. No.	16	classes on an ongoing basis, but we don't have a
17	Q. Advisory board is probably the wrong term, but	17	specific class that's tailored to that.
18	it's the...	18	Q. Did you teach those patent classes?
19	A. No. Aside from that one class that I taught to	19	A. Yes.
20	cover another professor who was on leave, I've had no	20	Q. What type of classes did you teach personally?
21	formal interaction with the school at all.	21	A. I taught virtually all of the classes in the
22	Q. And you consult; is that correct?	22	industrial design program, to include the studio class I
23	A. Yes.	23	just mentioned, human factors, drawing classes, history
24	Q. I'll ask you some questions about your teaching	24	of industrial design, design research methods.
25	experience. Let me back up, sorry.	25	Q. What's a studio class?
	08:41:49		08:44:10
	Page 10		Page 12
1	You consult. Generally what do you consult	1	A. A studio class is a class where we teach students
2	for, what clients? I don't want names, obviously,	2	how to design, how to organize a problem, how to
3	nothing confidential. What kind of consulting.	3	research issues, how to do patent searches, how to look
4	A. My consulting at this point in my life is	4	at prior art, how to examine the current state of the
5	consulting as an expert witness. My consulting work as	5	art, and then to start to conceptualize concepts,
6	a designer is -- I'm retired.	6	solutions to those problems, and then carry those
7	Q. You're an expert witness. You consult as an	7	through a systematic process of evolution and refinement
8	expert witness largely on design matters?	8	to a final design where they can be as detailed as
9	A. Design and utility matters and trade dressing	9	having CAD files for production.
10	matters.	08:42:02	
11	Q. You say design and utility. You're familiar with	10	Q. That is design patents, utility patents?
12	patents; right?	11	A. Yes.
13	A. Yes.	12	Q. Both. Do you consider yourself an expert in
14	Q. United States patents?	13	patent law?
15	A. Yes.	14	A. I consider myself to be knowledgeable, a
16	08:42:29	15	knowledgeable designer on patent law.
17	Q. You said trade dress as well?	16	Q. I'm not sure I understand that. A knowledgeable
18	A. Yes.	17	designer about patent law?
19	Q. You consult largely for plaintiffs, largely for	18	A. Well, your question was do I consider myself an
20	defendants, mixture of both?	19	expert on patent law. Not from the context of
21	A. Mixture of both.	20	practicing law. I'm not a lawyer. My interpretation
22	08:42:38	21	with expert in patent law would be somebody who
23	Q. Do you know what that mixture is?	22	practices law.
24	A. It's very -- best of my memory, it's very	23	Q. You're not that person; right?
25	slightly in favor of plaintiffs.	24	A. I don't practice law.
	Q. 55?	25	Q. You're not that person, are you? You're not an
	A. 55 percent, something like that. It's pretty		08:45:39
	08:42:51		Page 13
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1 expert in patent law; right?	1 things.
2 A. By a doubt it's not just offered, no.	2 Q. Okay. What's user focused design?
3 MR. PEELER: Objection.	3 A. User focused design is focusing on a person who
4 BY MR. HOGAN:	4 is using the product. And it's -- the goal is to make
5 Q. You've taught classes -- I assume you've taught 08:45:50	5 that interaction between the user and the product
6 classes regarding plastics manufacturing?	6 08:49:05 seamless, to avoid confusion, to minimize the misuse of
7 A. Yes.	7 the product. And another part of it is to make the
8 Q. Have you ever taught any classes specifically	8 product pleasurable to use.
9 directed to over-the-counter medical devices?	9 Q. Did you do anything to prepare for today's
10 A. We -- our design program does not have classes	10 08:49:41 deposition?
11 devoted to specific types of products, nor, for that	11 A. I reviewed the patent. I reviewed -- the patent
12 matter, do any of the other industrial design programs	12 at issue. I reviewed -- rereviewed the file history of
13 in the United States, that I'm aware of, except for	13 the patent. I reviewed all of the prior art, patents
14 three that I'm aware of that offer specialized classes	14 listed on the patent at issue. And I've reviewed the
15 in transportation design.	15 documents that have been shared between both parties,
16 But aside from that, our classes, our studio	16 08:50:07 that have been made available to me.
17 classes, are typical in that we do not teach how to	17 Q. What are those documents?
18 design specific categories of products, but how to	18 A. I have a list here of all the documents that I've
19 design products in general.	19 reviewed.
20 Q. Okay. Would it be fair to say, then, that if I 08:46:47	20 Q. Okay.
21 could try to recap the three reaches or practice areas	21 08:50:20 22 A. Want me to read it?
22 of your educational career -- and this is just from	22 MR. HOGAN: I would like that produced. We
23 Wikipedia -- your three main areas are interdisciplinary	23 don't have a copy of that.
24 design, user focused design, and culturally informed	24 MR. PEELER: It's what he just said. But
25 design. Is that fair?	25 you can mark it, if you want.
08:47:17	08:50:28 Page 14
	Page 16
1 A. Ask me that again, please.	1 THE WITNESS: I just prepared this
2 Q. Sure. So I don't have a document for this, but	2 yesterday.
3 this is information I'm aware of. You have three main	3 MR. HOGAN: For the record, Mr. Kemnitzer
4 research or practice areas when you were actively --	4 08:50:47 5 has provided a declaration in support of plaintiff's
5 before you retired. And I understand those to be	6 claim construction, opening brief in this case. The
6 interdisciplinary design, user focused design, and	7 materials considered, none is identified. Not none of
7 culturally informed design. Is that fair?	8 it. On the declaration it identifies a patent file
8 A. It includes those; it included those aspects,	9 history, and nothing more.
9 yes.	9 MR. PEELER: The stuff on the list is in the
10 Q. And others?	10 08:51:01 patent file history.
11 A. Yes.	11 MR. HOGAN: Not all of it is, Charlie.
12 Q. What others?	12 Dictionary definitions were received this morning, the
13 A. Well, if I'm -- now, are we speaking	13 joint claim construction statement.
14 educationally, or in my practice as a designer?	14 Do you just have one copy of this?
15 Q. Both.	15 THE WITNESS: Yes.
16 A. It really depends on what the project is. The	16 08:51:22 17 project can vary in complexity from a very simple
18 product, like designing a screwdriver, to designing	17 MR. PEELER: You can have it.
19 something much more complex, like a -- an automated	18 MR. HOGAN: I can have it?
20 prescription dispensing machine that goes out and picks	19 MS. PALMBERG: He said this is the only
21 and counts 600 oral solid prescriptions, packages them	20 copy.
22 in, and verifies their authenticity, and prints a label	21 MR. HOGAN: I'll make this Exhibit 1.
23 and puts it on it. So those are kind of two extremes.	21 (Exhibit No. K-1 was marked for
24 Depending on what the category of product is and the	22 identification.)
25 complexity of product, it may include a lot of different	23 BY MR. HOGAN:
08:48:46	24 Q. I'm going to keep this here and come back to
	25 this.
Page 15	08:52:15 Page 17

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<p>1 Okay. So if I understand you correctly, you</p> <p>2 reviewed everything that's listed on this document which</p> <p>3 has now been labeled Exhibit 1.</p> <p>4 We'll call this Kemnitzer 1. I'm going to</p> <p>5 abbreviate it K-1, if that's okay, Charlie?</p> <p>6 MR. PEELER: Yes, fine with me.</p> <p>7 BY MR. HOGAN:</p> <p>8 Q. Okay. I'll ask that again. If I understand your</p> <p>9 testimony correctly, you've reviewed all the documents</p> <p>10 that are listed in Exhibit Kemnitzer 1; right?</p> <p>11 A. Uh-huh.</p> <p>12 Q. Okay.</p> <p>13 MR. PEELER: Ron, you've got to answer with</p> <p>14 a yes or no as opposed to a shake of the head.</p> <p>15 THE WITNESS: I'm sorry. In response to the</p> <p>16 subpoena copy that I received, it instructed me to</p> <p>17 provide a list of all the materials that I reviewed</p> <p>18 during the course of my involvement in this case. And</p> <p>19 so I prepared this list last night, going through all of</p> <p>20 the records that I had, and to the best of my knowledge,</p> <p>21 this is complete.</p> <p>22 BY MR. HOGAN:</p> <p>23 Q. Okay. I appreciate that. The subpoena, which</p> <p>24 I'm going to show you in a second, actually asked for</p> <p>25 production of documents, not just a list. Did your</p>	<p>1 A. -- of last year.</p> <p>2 Q. -- December 2014 -- I'm not saying you should</p> <p>3 give me the exact date for each document; I doubt you'll</p> <p>4 remember off the top of your head. But roughly from the</p> <p>5 time frame spanning from December 2014 to when?</p> <p>6 A. To this past week.</p> <p>7 Q. Say March 23rd? Is that Monday? Yes, give or</p> <p>8 take. Could it be to March 23rd?</p> <p>9 A. Yes.</p> <p>10 Q. What did he provide you this week?</p> <p>11 A. I think the last document I received was a copy</p> <p>12 of my final declaration.</p> <p>13 Q. Okay. Did you not have it before that time?</p> <p>14 A. I did, but he confirmed that that was the</p> <p>15 declaration that was submitted.</p> <p>16 Q. I don't know if you know this. We received some</p> <p>17 documents this morning from Mr. Peeler, dictionary</p> <p>18 definitions from a dictionary from 1960.</p> <p>19 A. Yes.</p> <p>20 Q. Are you aware of those?</p> <p>21 A. Yes.</p> <p>22 Q. Do you know what the definitions were?</p> <p>23 A. Yes. They're on the list. May I refer to it?</p> <p>24 Those were definitions of base, cavity, and</p> <p>25 hollow, and also channel.</p>
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<p>1 attorney ask for a list? If he did, that's different.</p> <p>2 A. My attorney suggested that I prepare this --</p> <p>3 MR. PEELER: Hold on, hold on. Don't say</p> <p>4 what I suggested or not. But I think your testimony is</p> <p>5 clear as to what you looked at.</p> <p>6 THE WITNESS: All right.</p> <p>7 BY MR. HOGAN:</p> <p>8 Q. In preparing this list, what records did you go</p> <p>9 through and review? How did you come up with this list?</p> <p>10 A. All the files on my computer, and the printed</p> <p>11 files that I have.</p> <p>12 Q. Were those materials provided to you by</p> <p>13 Mr. Peeler?</p> <p>14 A. Some of them are.</p> <p>15 Q. What about the ones that were not?</p> <p>16 A. I provided them.</p> <p>17 Q. You went out and found them?</p> <p>18 A. Yes.</p> <p>19 Q. Yourself?</p> <p>20 A. Yes.</p> <p>21 Q. When did you -- when were these materials</p> <p>22 provided to you by Mr. Peeler?</p> <p>23 A. Over a period of time from my engagement in the</p> <p>24 case, which was roughly December --</p> <p>25 Q. So from --</p>	<p>1 Q. How did those definitions come to be? Who found</p> <p>2 those?</p> <p>3 A. I found base, cavity, and hollow.</p> <p>4 Q. Why were you looking for them?</p> <p>5 A. Because they were -- definitions of those terms</p> <p>6 were discussed in the claim construction documents, and</p> <p>7 I was looking at them.</p> <p>8 Q. You found them yourself -- not found by</p> <p>9 Mr. Peeler, you did it yourself; correct?</p> <p>10 A. Yes.</p> <p>11 Q. When did you do that?</p> <p>12 A. I don't know the dates. Somewhere in that window</p> <p>13 between December and now.</p> <p>14 Q. Was it closer to now or closer to December?</p> <p>15 A. I don't know.</p> <p>16 Q. You couldn't tell me if it was say, February?</p> <p>17 Was it recently or was it a month ago?</p> <p>18 A. I couldn't tell you reliably that it was</p> <p>19 February.</p> <p>20 Q. Can you give me your best recollection?</p> <p>21 A. Between December and now.</p> <p>22 Q. Okay. We'll come back to the definitions</p> <p>23 themselves specifically, in a little bit.</p> <p>24 Are you aware that we also received a new</p> <p>25 proposed claim construction this morning from</p>
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1	Mr. Peeler?	1	THE WITNESS: Change the question.
2	A. Yes.	2	BY MR. HOGAN:
3	Q. Did you speak with him about that construction?	3	Q. Let me ask it again. If you don't understand,
4	A. Did I what?	4	say, "I don't understand," and I'll ask the question
5	Q. Speak with him about that construction?	5	again. Okay?
6	MR. PEELER: Just answer yes or no.	6	08:59:23 So you testified -- let me back up.
7	THE WITNESS: Yes.	7	We received, this morning, four definitions
8	BY MR. HOGAN:	8	received from Mr. Peeler that we didn't have before;
9	Q. Was that construction -- was that new	9	right? I'm telling you that's the case. These
10	construction your idea?	10	definitions are not referenced in your declaration;
11	A. No.	11	correct?
12	Q. Do you know whose idea it was?	12	08:59:36 A. I'd have to refer back to my declaration to see
13	A. Yes.	13	that.
14	Q. Whose?	14	Q. Do you recall being provided these definitions
15	A. It was both of us.	15	along with your declaration?
16	Q. How did that idea come to be?	16	08:59:48 A. No, I don't.
17	MR. PEELER: Hold on. If you want to ask	17	Q. I have your declaration here, which we'll look
18	him about the construction and what his opinions are,	18	at. I'll represent to you you did not provide them.
19	that's one thing. But to ask him about collaboration	19	This is the first we saw these definitions, this
20	that he and I have had is impermissible, just like it	20	morning. Okay?
21	would be if I was asking your expert.	21	09:00:00 So what I'd like to know is, did you rely on
22	MR. HOGAN: Do you have an objection?	22	these definitions specifically in forming your opinions
23	You're using a speech to define the record, Charlie.	23	as written down, expressed in your declaration in this
24	MR. PEELER: Yes, I object to that question.	24	case.
25	MR. HOGAN: What's the objection?	25	09:00:13 A. Yes.
	Page 22		Page 24
1	MR. PEELER: Work product.	1	Q. You did.
2	MR. HOGAN: It's not work product. If he	2	And for the record, we never had any notice
3	was involved, it's not work product.	3	of those definitions in your declaration. I think
4	THE WITNESS: Mike, read Rule 26. It's	4	that's clear from the record.
5	clear.	5	09:00:35 While we're still on the questioning --
6	MR. HOGAN: I have. I'm not sure you have,	6	we're going to come back to this, because we have a
7	Charlie, based on the course of this case so far.	7	claim term to talk about. We'll come back to this.
8	MR. PEELER: I'm objecting to that.	8	(Exhibit No. K-2 was marked for
9	MR. HOGAN: Are you done?	9	identification.)
10	MR. PEELER: That's my objection, yeah.	10	09:01:01 BY MR. HOGAN:
11	BY MR. HOGAN:	11	Q. I'm handing you what's been marked K-2. Take a
12	Q. Of those definitions, which did you find	12	look at it, sir, let me know, do you recognize it?
13	yourself? All three of them?	13	A. Yes, I do recognize this.
14	A. There's four of them.	14	Q. You received that; correct?
15	Q. Base, cavity, hollow, which else?	15	09:02:22 A. Yes.
16	A. Base, cavity, hollow, I found.	16	MR. PEELER: Let me just note for the record
17	Q. What's the fourth? Channel.	17	that we never waived proper service of it.
18	So these definitions, did you rely on these	18	BY MR. HOGAN:
19	definitions when you wrote your declaration that was	19	Q. You've seen it; correct?
20	provided on March 13th.	20	09:02:31 A. Yes.
21	A. Yes, I considered them.	21	Q. When is the first time you saw it?
22	Q. You did? These definitions that you provided to	22	A. I believe it was earlier this week.
23	us this morning?	23	Q. Earlier this week. Am I correct in
24	MR. PEELER: I sent them to him this	24	understanding, sir, you produced no documents in
25	morning.	25	response to the subpoena; right?
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1 A. No.	1 MR. HOGAN: That doesn't have to do with the
2 Q. No. Do you plan on producing documents in	2 question.
3 response to the subpoena?	3 BY MR. HOGAN:
4 MR. PEELER: We have identified the	4 Q. Please answer the question, sir.
5 documents. 09:03:05	5 A. I provided this document. 09:04:39
6 MR. HOGAN: I didn't ask you a question,	6 Q. This document listing documents you reviewed;
7 Charlie.	7 correct?
8 I asked you a question, sir.	8 A. Have I reviewed that document?
9 MR. PEELER: I know, but --	9 Q. You provided this list which identifies documents
10 MR. HOGAN: Do you have an objection or are 09:03:11	10 you reviewed; correct? 09:04:52
11 you just going to keep talking?	11 A. Yes.
12 MR. PEELER: I'm going to talk and object.	12 Q. You produced, yourself, none of these documents
13 MR. HOGAN: You might not know this,	13 in this case; correct?
14 Charlie. In federal court you object -- I ask	14 A. Could you define what that means, that I've
15 questions, he answers. You object to form or privilege. 09:03:21	15 not... 09:05:01
16 MR. PEELER: I asked you about that earlier	16 Q. I think I have the answer.
17 and you wouldn't tell me, so...	17 I think you said a minute ago that you
18 MR. HOGAN: I didn't agree with your	18 worked as an expert witness; correct.
19 characterization of Rule 26, which is ridiculous. So	19 A. Yes.
20 I'd like you to withhold the commentary. If you have an 09:03:31	20 Q. And you worked in -- expert witness in 09:05:24
21 objection, make it; if you don't, then don't make an	21 litigation; correct?
22 objection. Don't say anything. Okay? Thank you.	22 A. Yes.
23 BY MR. HOGAN:	23 Q. Okay. You have a personal website, do you not,
24 Q. Sir?	24 sir?
25 A. What. 09:03:40	25 A. Yes. 09:05:35
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Page 28	
1 Q. Do you plan on producing any documents in	1 (Exhibit No. K-3 was marked for
2 response to the subpoena?	2 identification.)
3 MR. PEELER: Objection. He has complied	3 BY MR. HOGAN:
4 with the subpoena.	4 Q. That website identifies you as a design patent
5 BY MR. HOGAN: 09:03:50	5 and trade dress expert witness; right? 09:06:25
6 Q. Yes or no.	6 A. Yes.
7 A. I believe I have.	7 Q. Is the information on that website up to date?
8 Q. You produced documents?	8 A. I believe so.
9 A. Yes.	9 Q. Is it missing any representations or any
10 Q. Were they attached to your declaration? 09:03:54	10 consulting you've done? 09:06:46
11 A. No.	11 A. I believe that -- my answer to that is to the
12 Q. They were not. Do you think Kemnitzer 1, this	12 best of my knowledge, it covers all of it.
13 list, meets your obligation to produce documents	13 Q. Okay. I hand you what's been marked K-3. I
14 pursuant to the subpoena? Is that what you think?	14 would represent to you this is a printout of your
15 MR. PEELER: Yes. 09:04:11	15 personal website. Can you flip through it and confirm 09:07:25
16 THE WITNESS: I believe so.	16 that? Let me know when you're done.
17 MR. HOGAN: Are you answering, Charlie, or	17 (Brief pause.)
18 is the witness going to answer? Object or be quiet,	18 THE WITNESS: I'm done.
19 please.	19 BY MR. HOGAN:
20 MR. PEELER: I'm going to object. 09:04:19	20 Q. Do you agree with me, sir, that that's a printout 09:08:32
21 MR. HOGAN: What's the objection?	21 of your personal website?
22 MR. PEELER: That you're badgering him, that	22 A. It appears to be.
23 you're mischaracterizing the state of the subpoena. I	23 Q. Okay. I would represent that that's the way it's
24 object to the service of the subpoena. In fact, it has	24 supposed to be. That's what we tried to do, anyway.
25 not been served properly. Those are my objections. 09:04:29	25 You can see down in the corner, that's your URL address 09:08:43
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1 in the left-hand corner, just so I'm not giving you	1 Q. Spokes in the design?
2 something that you're not already aware of.	2 A. The design from a utilitarian point of view. One
3 Would you -- so as we had mentioned a moment ago,	3 of the issues was that it was obvious to a designer that
4 across the top of every -- not every page, but the main	4 it could have been produced, and I opined on how
5 pages, Ronald Kemnitzer, design patent and trade dress	5 complicated of a process it was and how unique the
6 expert witness; right?	6 solution was.
7 A. Yes.	7 Q. Okay. Do you recall what the -- so you said -- I
8 Q. Would you please turn to the one, two, three,	8 think you said the subject matter was a molded rocking
9 fourth page in, bottom right-hand corner, there's 1/6	9 chair.
10 that's listed there. Fourth page in. One more, I	10 A. Yes.
11 think. That's it.	11 Q. Okay. Next one, April 12th, 2011. See that one?
12 Okay. This says litigation support	12 A. Yes.
13 experience about a third of the way down. See that?	13 Q. Design patent infringement?
14 A. Uh-huh.	14 A. Yes.
15 Q. It says "my client," underlined, in parens. See	15 Q. Okay. Next one, July 11, 2011, design patent
16 that?	16 infringement?
17 A. Uh-huh.	17 A. Yes.
18 Q. This is a listing of the representation that	18 Q. Next one, March 17th, 2012, design patent
19 you've done?	19 infringement?
20 A. Yes.	20 A. Yes.
21 Q. That's probably wrong. Let me try this way.	21 Q. Next one, August 15th, 2012, design patent
22 This is a list of the cases you've been an expert	22 infringement? Next one, October 4th, 2012, design
23 witness on; correct?	23 patent infringement?
24 A. Yes.	24 A. Yes.
25 Q. Okay. There's several here. I'm going to go	25 Q. Next one down, December 21st, 2012, design patent
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1 through them quickly. I assume you're aware of them.	1 infringement?
2 The first one, October 1st, 2008, design	2 A. This was Ethicon versus Covidien, and this
3 patent infringement; right?	3 actually involved a utility patent.
4 A. Yes.	4 Q. Are you looking at this one that says 12-21-2012?
5 Q. Second one, July 6th, 2009, it says case, appeal	5 A. I'm looking at the one that says 11-8-12. You
6 of denial of U.S. patent application. Provided written	6 missed that.
7 opinion/affidavit in support of appeal. See that?	7 Q. I missed that. Beg your pardon. Back up. That
8 A. Yes.	8 was the next one in order.
9 Q. Was that a design patent or utility patent?	9 November 8th, 2012; right? Ethicon versus
10 A. That was a utility patent.	10 Covidien, design patent infringement.
11 Q. Okay. And the outcome is?	11 A. Yes.
12 A. The patent was allowed.	12 Q. Okay. Beg your pardon.
13 Q. The patent was allowed. Do you recall what	13 A. The case also involved infringement allegations
14 technology that was directed to?	14 for utility patents. And although I was arguing the
15 A. By technology, are you referring to manufacturing	15 issues involved in the design patent infringement, a
16 process?	16 large part of that argument was the corresponding
17 Q. What was the subject matter of the patent?	17 utility patent.
18 A. Subject matter of the patent was a molded rocking	18 Q. Okay. You're saying that now?
19 chair.	19 A. I just said that.
20 Q. Molded rocking chair. What was your opinion at	20 Q. You did. It says here, in your experience,
21 that date, of what the deal was?	21 design patent infringement; correct?
22 A. It dealt whether or not it was a unique and	22 A. Right. That was my role in that overall case.
23 creative solution.	23 Q. Okay. Let's go to the next one, then. December
24 Q. What, the design?	24 21st, 2012, I guess, that's Oakley?
25 A. The design.	25 A. Yes.
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1	Q. Versus Hire Order, design patent infringement?	1	my website with.
2	A. Yes.	2	Q. Okay.
3	Q. Next one is April 23rd, 2013, design patent infringement; right?	3	A. One of them is this case.
4		4	Q. Okay, this case.
5	A. Yes.	5	A. And there is another case, DDS versus -- I can't
6	Q. Let's see. Next page there's several more.	6	remember the name of the plaintiff, but that's also a
7	Looks like you have about 14 here, so I'll just keep	7	utility patent case.
8	going.	8	Q. What are you doing in that case? What's your role as a consultant in that case?
9	August 30th, 2013, design patent	9	A. My role is to opine on infringement.
10	infringement; right?	10	Q. Of a utility patent?
11	A. Yes.	11	A. Of a utility patent.
12	Q. September 28th, next one, 2013, design patent and trade dress infringement; right?	12	Q. Have you provided an affidavit in that case?
13		13	A. It also includes trade dress.
14	A. Sorry, which one are we on now?	14	Q. Trade dress, so utility plus trade dress. Have you provided a declaration in that case?
15	Q. September 28th, 2013.	15	A. Yes.
16	A. Yes.	16	Q. You have.
17	Q. Okay. Next one, June 20th, 2014, design patent infringement?	17	Have you been deposed in that case?
18		18	A. No.
19	A. Yes.	19	Q. Do you know what court that's pending in?
20	Q. And then the last one listed here is July 8th, 2014. It's also design patent infringement; right?	20	A. No, I don't. I can't recall.
21		21	Q. Can you give me like a state? California? New York? New Jersey?
22	A. Yes.	22	A. I can't recall right now.
23	Q. Okay. Backing up for a second, we talked a minute ago about the representation you had. The second one listed here on this document, on July 6th, 2009,	23	Page 34
24		24	Page 36
25		25	
1	that was the appeal of a U.S. patent application. You provided the written opinion affidavit in support of appeal, we talked about a second ago, the molded rocking chair; right?	1	Q. If you recall, would you tell me at some point today?
2		2	A. Yeah.
3		3	Q. Who are the lawyers in that case? Do you know the -- who are you working with, I guess?
4		4	A. I'm having a blank moment.
5	A. Yes.	5	MR. PEELER: If it comes to you, you can
6	Q. Did you construe claims for purposes of that?	6	supply it later.
7	A. No.	7	THE WITNESS: If it comes to me I'll be
8	Q. You argued that the design was not obvious and essential then; right?	8	happy to give you the name. I'm not evading your
9		9	question; it slips my mind right now.
10	A. Yes.	10	09:17:03
11	Q. For the rocking chair case that we were just discussing here, do you remember the name of the inventor?	11	09:17:25
12		12	BY MR. HOGAN:
13		13	Q. I understand. No problem.
14	A. Yes. Cooper Woodring.	14	A. Then there was a prior case to this, which was
15	Q. Cooper Woodring. Can you spell that?	15	several years prior to the first case listed, which
16	A. W-o-o-d-r-i-n-g.	16	involved Nike, and that was a utility patent case.
17	Q. Thank you.	17	Q. Who did you consult with?
18	A. His name is listed.	18	A. I can't remember that.
19	Q. Is it there? I beg your pardon, I just missed it.	19	Q. Was it Nike?
20		20	A. Nike was my client, was the company I was
21	A. May I make a correction?	21	representing, yes.
22	Q. Sure.	22	Q. Utility patent. Do you recall what your role was?
23	A. You asked if this was a full and complete	23	A. My role was to -- it was an injury claim case,
24	listing, and I said to the best of my knowledge. But	24	and my role was to opine on whether or not the claims of
25	there are two cases recently that I have not updated in	25	09:18:18

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1 the patent were a cause of the injury.	1 disqualified as an expert in any case, have you?
2 Q. Was it patent infringement?	2 A. No.
3 A. No.	3 Q. Have you ever had any part of one of your expert
4 Q. Okay. Patent injury. I have to confess, I've	4 declarations or opinions struck by a court?
5 never heard that before.	5 A. No. 09:21:33
6 A. I've been -- I received -- it's not on my list	6 Q. Have you ever been prevented from testifying in a
7 because I've been advised that -- I've been advised that	7 case or proceeding for any reason?
8 I should only show cases from the previous four years,	8 A. No.
9 and others say I should show all of my cases, so I'm	9 Q. You're aware, are you not, sir, that there's
10 just trying to keep it within a reasonable amount of	10 different standards between infringement of a design 09:21:51
11 listings.	11 patent and a utility patent; right?
12 Q. I understand.	12 A. Yes.
13 I don't know what patent injury is. It was	13 Q. What's the standard for a design patent?
14 not patent infringement?	14 MR. PEELER: Objection that you're asking
15 A. No, it was a liability. It was personal injury.	15 him for a legal conclusion. 09:22:00
16 Q. Okay.	16 BY MR. HOGAN:
17 A. And the claim was that it was because of the way	17 Q. You can answer. Go ahead.
18 the product was designed.	18 A. For infringement?
19 Q. Okay, so -- go ahead.	19 Q. For a design patent, yes.
20 A. Yeah. So I had to do -- examine all of the	20 A. For infringement. That an ordinary observer
21 claims and translate those to the injury, as to whether	21 would purchase a product, thinking it would be the other
22 or not they could have caused it.	22 product, the infringing product, and in that case the
23 Q. The injury to the person?	23 product is infringing.
24 A. Yes.	24 Q. Ordinary observer test.
25 Q. Okay. Over the course of your career, how many	25 You're familiar with Egyptian Goddess, I 09:22:30
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1 cases, ball park, have you worked in as an expert	1 assume; right?
2 witness?	2 A. Yes.
3 Let me back up. I understand that not all	3 Q. We walked into that.
4 your expert witness experience is listed on your	4 Design patents don't have claims, do they?
5 personal website. There are probably more cases you	5 A. Yes, they do. 09:22:40
6 worked on that aren't listed here; correct?	6 Q. What do they say, typically?
7 A. One or two.	7 A. The ornamental appearance of.
8 Q. One or two. Okay.	8 Q. I claim the ornamental appearance of picture X,
9 A. I think there was a case, probably 20 years ago,	9 picture Y, picture Z; right?
10 for -- it was a utility patent case involving a fishing	10 A. Yes. 09:22:52
11 reel.	11 Q. It's true, is it not, that typically in design
12 Q. Fishing reel.	12 patent cases, there is no claim construction; right?
13 A. Yeah.	13 A. I can't answer that for certain. I think there
14 Q. And did you opine on infringement or on the	14 was a period of time when there was written claim
15 validity?	15 construction. 09:23:12
16 A. It was a strange case. I wrote a report, but the	16 Q. Did you ever provide one of those?
17 report was -- did not have the structure or the kind	17 A. No.
18 of -- well, I just wrote a report and that was the end	18 Q. I understand, since --
19 of it, and I never heard anything more about it. I was	19 A. Not to my knowledge.
20 not deposed, not even advised of the outcome of the	20 Q. Not to your knowledge. Beg your pardon. 09:23:20
21 case, and I don't know that my report was even used.	21 I understand, since Egyptian Goddess II from the
22 Q. Okay. Have you ever testified as an expert at	22 federal circuit, the federal circuit ultimately
23 trial?	23 discourages claim construction for design cases. Are
24 A. No.	24 you aware of that?
25 Q. So is it fair to say you've never been	25 A. Yes. 09:23:32
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<p>1 Q. Since that time have you ever done a claim 2 construction for a design patent?</p> <p>3 A. No.</p> <p>4 Q. Okay. And utility patent claims have actual 5 claims to the composition or the method or the 09:23:44 <p>6 structures disclosed in the patent; correct?</p> <p>7 A. Say that again, please.</p> <p>8 Q. Utility patents have claims that claim the 9 structure of the invented subject matter, for example; 09:24:04 <p>10 right?</p> <p>11 A. They can claim the structure.</p> <p>12 Q. Right. The point is utility patent claims 13 actually are more than just saying, "I claim the 14 pictures shown in A, B and C." They're actual 15 structures, they can be methods, compositions, things 09:24:16 <p>16 like that; right?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Do you know the standards of claim 19 construction in a utility patent? Let me try that 20 again. Back to the question. 09:24:37 <p>21 Do you know what the standard is for 22 construing the claims of a utility patent?</p> <p>23 A. No, I don't know what you're referring to.</p> <p>24 Q. Okay.</p> <p>25 A. I know there's a process of construing the</p> </p></p></p></p>	<p>1 Q. I want to look real quick, on top of page 1 of 11 2 of Exhibit K-5, that's where your professional 3 background starts.</p> <p>4 A. Uh-huh.</p> <p>5 Q. Your professional background has got 1 through -- 09:27:54 <p>6 some numbered paragraphs there, 1 through 8. See that?</p> <p>7 A. Yes.</p> <p>8 Q. This professional background does not appear in 9 this form in your personal website. Did you prepare 10 this professional background for this case? 09:28:17</p> <p>11 A. My website is a marketing instrument, and so it's 12 brief, it's to the point, and hits highlights that I 13 think would be of interest to potential clients.</p> <p>14 So this is a more complete listing of, 15 particularly of things that I think are pertinent to</p> <p>16 this case. 09:28:49</p> <p>17 Q. I understand. What I'm asking is a different 18 question, though. This professional background, these 19 paragraphs 1 through 8, does this always accompany your 20 CV when you provide a declaration in a patent case, or 09:29:02 <p>21 is it just for this case?</p> <p>22 A. I can't say that I always do it exactly the same 23 way.</p> <p>24 Q. When you provide a CV along with your 25 declarations, when you consult and you're an expert 09:29:19</p> </p></p>
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<p>1 claims, and it's a conversation between both parties.</p> <p>2 Q. Okay.</p> <p>3 (Exhibits Nos. K-4 and K-5 were marked for 4 identification.)</p> <p>5 BY MR. HOGAN: 09:25:01</p> <p>6 Q. I'm handing you what's been marked Exhibits K-4 7 and K-5, in that order.</p> <p>8 K-4 is plaintiff's opening claim 9 construction brief in this case; correct?</p> <p>10 A. Yes. 09:26:43</p> <p>11 Q. K-5 is Exhibit A to that opening brief, to make 12 it easier to refer to Exhibit K-5. Okay?</p> <p>13 Take a look at -- I'm going to refer to K-5 14 mainly, for the time being. K-5 is your declaration.</p> <p>15 And attached to your declaration is your -- it looks 16 like some information, personal background, list of 17 patents, CV, et cetera. Recognize that?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Do you agree with me, sir, K-5 is the 20 declaration you provided in this case for plaintiff's 09:27:13 <p>21 claim construction?</p> <p>22 A. Yes.</p> <p>23 Q. You also had, I think you said a minute ago, 24 attached to the back of it as your CV?</p> <p>25 A. Uh-huh, yes. 09:27:27</p> </p>	<p>1 witness on other cases for patent utility or design, you 2 provide a professional background every time; right?</p> <p>3 A. No.</p> <p>4 Q. Why did you do it this time?</p> <p>5 A. I usually put this information in -- I don't</p> <p>6 always -- I'm not always required to file a declaration,</p> <p>7 so oftentimes I'm asked to provide a report. I include</p> <p>8 this within the report, so it's in the text of a report.</p> <p>9 Q. I see what you're saying. So sometimes this can 10 be in the text of the report? 09:30:07</p> <p>11 A. Yes.</p> <p>12 Q. And when it's not in the text of the report, you 13 provide it in this form --</p> <p>14 A. Yes.</p> <p>15 Q. -- along with your CV? 09:30:13</p> <p>16 A. Yes.</p> <p>17 Q. Let me try this. Whenever you act as an expert 18 in a patent case, you supply professional background in 19 one form or another, either like this as an attachment 20 to your CV, or in the report itself? 09:30:23</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Does this format of special background, do 23 you edit it? Does it change? Do you adjust it for 24 cases, or does it stand every time, in either format we 25 discussed? 09:30:40</p>
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<p>1 A. It's pretty much the same. My professional 2 background is pretty extensive, and I've designed a lot 3 of different categories and a lot of different types of 4 products. So if I'm engaged in a case that is more 5 technical, I may not include areas of experience that 6 are not pertinent to that.</p> <p>7 MR. HOGAN: Okay. Counsel, we ask for you 8 to provide to us a list of representations by the 9 witness, according to Rule 26. We don't have that yet. 10 We have not gotten that from you or the expert, so we'd 11 like that, please.</p> <p>12 MR. PEELER: Say that again, now?</p> <p>13 MR. HOGAN: We'd like a list of 14 representations by the expert, according to Rule 26. We 15 have not received that from you or the expert so far.</p> <p>16 MR. PEELER: Okay.</p> <p>17 MR. HOGAN: You never provided that to us, 18 so we're asking you for that.</p> <p>19 MR. PEELER: Right. I guess I'm being a 20 little hesitant because I don't think that at this stage 21 of the litigation he has to prepare a report under the 22 requirements of Rule 26. So I think he probably will in 23 this case, and we'll comply with it. Are we saying the 24 same thing?</p> <p>25 MR. HOGAN: No. Is it your contention that</p>	<p>09:31:08</p> <p>09:31:31</p> <p>09:31:42</p> <p>09:31:53</p> <p>09:32:09</p>	<p>1 Q. Did you write the text of the patent? 2 A. I don't recall.</p> <p>3 Q. You have no patents that are directed to 4 over-the-counter medical devices, do you? 5 A. Yes, I do.</p> <p>6 Q. Are they listed here? 7 MR. PEELER: I'm going to object to that 8 question as vague.</p> <p>9 THE WITNESS: I'm sorry, take that back.</p> <p>10 No, I don't have a patent for it.</p> <p>11 BY MR. HOGAN:</p> <p>12 Q. Okay. And you don't have a patent directed as a 13 reminder device, do you? 14 A. No.</p> <p>15 Q. Keep that handy. We're going to go to Exhibit 5 16 in a few minutes. 17 (Exhibit No. K-6 was marked for 18 identification.) 19 BY MR. HOGAN: 20 Q. I'm handing you an exhibit that's been marked -- 21 hang on. I did a horrible sticker job. I'm going to 22 try to fix this. 23 I'm handing you an exhibit that's been marked 24 Exhibit K-6, with a proper stamp on it. Do you 25 recognize that document, sir?</p>	<p>09:33:31</p> <p>09:33:52</p> <p>09:34:01</p> <p>09:34:29</p> <p>09:35:03</p>
<p>1 his affidavit is not compliant with Rule 26?</p> <p>2 MR. PEELER: No, I think his affidavit is in 3 support of this claim construction.</p> <p>4 BY MR. HOGAN:</p> <p>5 Q. So going back to your --</p> <p>6 MR. PEELER: Getting back to you, to 7 supplement what he said on his representations, I don't 8 have a problem with getting you that information in a 9 couple weeks.</p> <p>10 MR. HOGAN: Thank you. I don't need it 11 tomorrow.</p> <p>12 MR. PEELER: Yes, sure.</p> <p>13 BY MR. HOGAN:</p> <p>14 Q. Okay. Looking back at your CV here, this is the 15 CV part of K-5 we're talking about. Numbered paragraph 16 5, you list a number of patents. It says here: I'm the 17 inventor of the following patents. There's a bunch 18 there; right?</p> <p>19 A. Yes.</p> <p>20 Q. Certainly design patents and utility patents; 21 right?</p> <p>22 A. Or utility patents.</p> <p>23 Q. Okay. Did you draft any of these patents 24 yourself?</p> <p>25 A. Could you explain that term?</p>	<p>09:32:25</p> <p>09:32:38</p> <p>09:32:47</p> <p>09:33:01</p> <p>09:33:17</p>	<p>1 A. Yes.</p> <p>2 Q. What is it? 3 A. This is the patent at issue.</p> <p>4 Q. In this lawsuit; correct? 5 A. Yes.</p> <p>6 Q. I'm going to hand you another copy of that. It's 7 the exact same thing. We're going to look at the 8 figures and some things; I think it might be easier to 9 have two things to flip back and forth between, so you 10 can use whatever you want. It was just to expedite 11 things, make life a little easier, if that's okay with 12 everybody.</p> <p>13 You want two? 14 MR. PEELER: I've got more than two.</p> <p>15 MR. HOGAN: Don't think I was leaving you 16 out, Charlie.</p> <p>17 MR. PEELER: No.</p> <p>18 BY MR. HOGAN:</p> <p>19 Q. When did you see the patent for the first time? 20 A. I saw the patent for the first time in, I 21 believe, December 2014.</p> <p>22 Q. Who gave it to you? 23 A. I'm not sure of my recollection, whether I was 24 given a number or a file of the patent. I believe that 25 I looked the patent up.</p>	<p>09:35:22</p> <p>09:35:34</p> <p>09:35:45</p> <p>09:35:52</p> <p>09:36:23</p>

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1	Q. Who did you get the number from?	1	Q. The definitions?
2	A. From counsel.	2	A. Yes.
3	Q. Okay. Have you read the patent?	3	Q. Do you believe the definitions in the patents?
4	A. Yes.	4	A. Or the descriptions.
5	Q. How many times, roughly?	5	Q. Descriptions in the patent?
6	A. 20.	6	A. Descriptions, yes.
7	Q. 20. That's a lot.	7	Q. Okay. So you don't mean definitions in the
8	I think you used the word counsel a second	8	patent, you mean descriptions in the patent; right?
9	ago. By counsel, do you mean Mr. Peeler?	9	A. Yes.
10	A. Yes.	10	Q. Did you find anything in the patent claims
11	Q. Is there any other counsel you've worked with in	11	confusing?
12	this case?	12	A. I think the one -- well, yes.
13	A. No.	13	Q. You found things confusing?
14	Q. The title of this, referring now to K-5 -- sorry,	14	A. I found at least one thing confusing.
15	beg your pardon. 6. That's the 358 patent. If I refer	15	Q. What was that?
16	to it as the 358 patent, is that fair, you'll know what	16	A. I think there were some terms that were -- two
17	I mean?	17	terms that I think created some initial confusion for
18	A. Yes.	18	me. It was channel and cavity.
19	Q. The title is method and device for recording	19	(Exhibit No. K-7 was marked for
20	periodic medicinal dosages; right?	20	identification.)
21	A. Yes.	21	BY MR. HOGAN:
22	Q. It's a fairly straightforward sort of device;	22	Q. So you testified that the terms channel and
23	isn't it?	23	cavity caused you some initial confusion. In your
24	A. Yes.	24	declaration, I believe you testified, you state that
25	Q. It's even kind of simple; right?	25	those terms have a plain, ordinary meaning; correct?
	Page 50		Page 52
1	A. In the scheme of product design, yes.	1	A. Yes.
2	Q. Okay. When you read it, did you find anything	2	Q. But you were confused when you read them the
3	confusing about it?	3	first time?
4	A. By the fact that I read it 20 times suggests,	4	A. I was confused because both terms were used, and
5	correctly, that there's a lot of connections to be made	5	I -- my initial thought was that they were very similar
6	between the text and the patent images. And so it	6	terms, which prompted my checking the dictionary for the
7	required a lot of sifting through the information to	7	definitions, which is why those were on that list of
8	really get a grasp on what was what.	8	materials that I researched.
9	Q. As an expert witness, being diligent, you read a	9	After reading those definitions, and looking
10	patent a few times, anyway; right?	10	very carefully at the use of those two terms, I can say
11	A. Yes.	11	that today I'm very confident of what their meaning is.
12	Q. In any case, you read the patent a number of	12	Q. And just so we're clear, in your declaration,
13	times?	13	when you talk about the terms channel and cavity, you
14	A. Yes.	14	nowhere cite the dictionary definitions provided to us
15	Q. Is this patent any different from any other	15	today in support of your interpretations; right?
16	patent you've worked with in that regard?	16	A. Can you say that again?
17	A. No.	17	Q. In your declaration, for the terms channel and
18	Q. You've read the claims of the 358 patent; right?	18	cavity, you don't cite those dictionary definitions we
19	A. Yes.	19	received this morning, in support of your
20	Q. Did you understand them?	20	interpretations or your opinions, do you?
21	A. Yes.	21	A. No.
22	Q. When you read those claims, did you find any	22	Q. Why not?
23	ambiguity in those claim terms?	23	A. I looked at those definitions to clarify my
24	A. There was -- I had some ambiguity between some of	24	understanding of the difference between the two.
25	the definitions, which I worked through.	25	Q. So your confusion was between the two, not the
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1 meaning of the two -- of the terms specifically; is that	1 particularly the illustrations.
2 correct?	2 Q. And that was an event you had before you filed
3 A. Right.	3 your declaration. It was not new evidence, was it?
4 Q. Were you very confident in your understanding of	4 A. No.
5 the term channel at the time you signed your 09:42:51	5 Q. I hand the witness what's been marked 09:46:43
6 declaration?	6 Exhibit K-7.
7 A. Well, I was -- I still had some questions about	7 I'm not going to ask you a lot of detailed
8 it, but that was my best understanding of it at the time	8 questions about this. This is a document bearing Bates
9 that I signed the declaration.	9 numbers P-280 to P-390. I'll just ask you to flip
10 Q. Has that understanding changed since then? 09:43:27	10 through it, sir, let me know if you recognize it. 09:47:06
11 A. Yes.	11 MR. PEELER: Can we take a quick break?
12 Q. Why?	12 MR. HOGAN: Let him answer the question and
13 A. By going back and thoroughly examining the patent	13 we'll go.
14 language in conjunction with the illustrations. The	14 MR. PEELER: You didn't ask him a question.
15 term channel means, in my understanding as a designer, 09:43:48	15 MR. HOGAN: I asked him if he recognized it. 09:47:18
16 the terms channel and cavity can be used	16 THE WITNESS: Yes.
17 interchangeably. The difference between them is not	17 MR. PEELER: Let's take a break.
18 significantly different. And so because of that, I had	18 MR. HOGAN: Can we keep it short, less than
19 some questions about the terminology about them.	19 10?
20 Q. That occurred after you signed your declaration? 09:44:18	20 MR. PEELER: How about three minutes. 09:47:26
21 A. I think, after I signed the declaration, that	21 MR. HOGAN: Great.
22 I've resolved that issue.	22 THE VIDEOGRAPHER: We're off the record at
23 Q. Did you resolve that of your own volition, or did	23 9:47.
24 somebody ask you to resolve that confusion?	24 (A recess ensued.)
25 A. I solved that on my own. 09:44:35	25 THE VIDEOGRAPHER: We're back on the record 09:51:40
	Page 54
	Page 56
1 Q. When did it occur to you that you should solve	1 at 9:51.
2 that confusion?	2 BY MR. HOGAN:
3 A. It's been an ongoing -- it's been an ongoing	3 Q. Before we went on the break, I asked you, sir, if
4 issue.	4 you recognized Exhibit K-7. Do you?
5 Q. Do you intend to continue resolving or evolving 09:44:48	5 A. Yes. 09:51:51
6 your definitions in this case?	6 Q. What is it?
7 A. Well, if new evidence is introduced that affects	7 A. It's the file history of the patent at issue.
8 some of the decisions that I've made, I certainly may	8 Q. File history of the 358 patent?
9 change my opinions. I reserve that right.	9 A. Yes.
10 Q. Do you? 09:45:10	10 Q. You didn't reference it anywhere in your 09:52:01
11 A. If new evidence is provided, yes.	11 declaration.
12 Q. And you'll change your opinions at any time, you	12 A. No.
13 could potentially; right?	13 Q. So is it correct, sir, that this file history, in
14 A. I wouldn't say at any time. I would say only if	14 your view, has no impact at all on the claim
15 new evidence is produced that changes the facts of the	15 construction in this case? 09:52:12
16 case. 09:45:36	16 MR. PEELER: I'm going to object that you're
17 Q. But with channel and cavity, you changed your	17 mischaracterizing his declaration.
18 mind, with no new facts coming to light; isn't that	18 BY MR. HOGAN:
19 true?	19 Q. You can answer.
20 MR. PEELER: Object. 09:46:00	20 A. You want a yes or no answer to that. Ask the
21 BY MR. HOGAN:	21 question again.
22 Q. You can answer.	22 Q. Am I correct, sir, that the file history of the
23 A. I have changed my mind about that, yes.	23 358 patent doesn't affect your opinions in this case
24 Q. With no new facts coming to light; correct?	24 about claim construction at all?
25 A. I think, with a clear reading of the patent, and 09:46:18	25 A. No, you're not correct. 09:52:38
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1	Q. You didn't cite the file history anywhere in the declaration, did you?	1	A. And after. Before and after.
2	MR. PEELER: Objection. That	2	Q. Can you tell me how many before, how many after?
3	mischaracterizes his declaration.	3	A. I probably read it four or five times after.
4	BY MR. HOGAN: 09:52:53	4	Q. Do you know the name of the inventor of this patent, Lisa Duer?
5	Q. You can answer.	5	A. I know her name.
6	Let me try this way. I'll ask you another question. I think, in paragraph 4 of your declaration, you state that you've considered the patent file history. We'll get your declaration in a second. Do you remember that part?	6	Q. Did you ever speak to her?
7	A. Yes.	7	A. No.
8	Q. In support of your actual construction, your actual terms, there's no citation to file history, is there?	8	Q. Did you ever meet her?
9	MR. PEELER: Objection; mischaracterizes his declaration.	9	A. Say again, please.
10	BY MR. HOGAN: 09:53:03	10	Q. You never met her?
11	Q. Do you recall?	11	A. No.
12	A. When I took on the case, I reviewed all of these materials, pretty much all of the ones that are on the list, before I began my work on the case.	12	Q. Never exchanged e-mails with her?
13	Q. I didn't ask you that. What I want to know is, in your opinion, the declaration, the number of paragraphs, there's no citations to file history in	13	A. No.
14	09:53:17	14	Q. One second. Okay. Turn back, please, to Exhibit K-6. That's the 358 patent. Do you have that in front of you?
15	09:53:22	15	A. Yes.
16	09:53:26	16	Q. Do me a favor, please. The abstract section, see that?
17	09:53:36	17	A. Yes.
18	09:53:40	18	Q. Read that to yourself; let me know when you're done.
19	Page 58	19	(Brief pause.)
20	09:56:24	20	THE WITNESS: Okay, I'm finished.
21	09:56:50	21	Page 60
22		22	
23		23	
24		24	
25		25	

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1 not be looking at it when they use it.	1 very bottom. Line 66 or so of column 6, over to
2 Q. They could slide it, interact with it, but not	2 line 3 of column 7, read that to yourself, and let me
3 look at it; correct?	3 know when you're done.
4 A. Correct.	4 (Brief pause.)
5 Q. Turn, please, to column 7, line 41. About 09:58:03	5 THE WITNESS: Do you want me to read through 10:01:21
6 line 41. It starts at: Each slide assembly. See that?	6 the figures?
7 A. Uh-huh.	7 BY MR. HOGAN:
8 Q. Read to yourself, please, Line 41 to about	8 Q. No, just stop at line 3.
9 lines -- in that paragraph, Line 47. Let me know when	9 This is basically saying -- it does say: The
10 you're done, please. 09:58:34	10 technology described herein, together with further 10:01:28
11 (Brief pause.)	11 advantages thereof, may best be understood by reference
12 THE WITNESS: Yes.	12 to the following description of the simplest form of the
13 BY MR. HOGAN:	13 invention, taken in conjunction with the accompanying
14 Q. Okay. I'm going to read the first sentence:	14 drawings in which -- and it lists Figures 1 through 5;
15 Each slide assembly, 200, is comprised of a slide base, 09:58:56	15 is that right? 10:01:41
16 210, a slide base lock, 220, a slide base channel, 230,	16 A. Uh-huh, yes.
17 a slide base channel surface, 240, and a finger button,	17 Q. So the patent specifically refers to the figures
18 250, period. See that?	18 in part of the description, doesn't it? In that passage
19 A. Yes.	19 we just looked at, it specifically refers to the
20 Q. In that sentence, this word of comprised, do you 09:59:11	20 figures; right? 10:01:56
21 know what comprised or comprises mean in a patent,	21 A. To what?
22 utility patent?	22 Q. It specifically refers to the figures in the
23 A. Yes.	23 patent.
24 Q. What's it mean?	24 MR. PEELER: Objection; vague.
25 A. It means a group of. 09:59:21	25 BY MR. HOGAN: 10:02:03
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Page 64	
1 Q. Okay. Continuing on, the next sentence. Let's	1 Q. It does; right? It states: Taken in conjunction
2 see here: The slide base channel surface may have one	2 with the company drawings; right?
3 or more distinctive colors to reinforce if a dosage has	3 A. Yes.
4 been taken, e.g., red may show in the dosage taken	4 Q. Turn to figure 2, please, of the 358 patent. See
5 position, and a green may show in the dosage not taken 09:59:42	5 that figure? 10:02:53
6 position, period; right?	6 A. Yes.
7 A. Yes.	7 Q. You've seen that before; right?
8 Q. Did I read that correctly? Okay, so reading	8 A. Yes.
9 that, what's the purpose of the colors?	9 Q. There are four slides pictured on that image of
10 A. The purpose of the colors is to reinforce the	10 the device; correct? 10:03:05
11 position of the finger button, which indicates whether	11 A. That's correct.
12 or not a dosage has or has not been taken.	12 Q. Do you see, there's the finger buttons? See
13 Q. So do the colors reinforce position or reinforce	13 those?
14 whether a dosage is taken or not taken?	14 A. Yes.
15 A. It reinforces the position. 10:00:12	15 Q. And you see there is the dosage indicators. I 10:03:14
16 Q. And the color lets you know whether the dosage is	16 think they're labeled 140 in this figure. See that?
17 taken or not; right?	17 A. Yes.
18 A. Color indicates that a dosage has been taken, but	18 Q. See next to the finger buttons, there's like
19 doesn't guarantee that it's been taken.	19 crosshatching. See the crosshatching? They look
20 Q. So the purpose of that is letting you know dosage 10:00:30	20 different on either side of the finger button. Do you 10:03:27
21 taken, not taken; right? Green, not taken; red -- I'm	21 notice that?
22 sorry, I have that backwards. Red, dosage taken; green,	22 A. I don't see that they look different. There's
23 not taken. Right? That's the purpose of those?	23 not enough information here to see that. I don't see
24 A. Yes.	24 any crosshatching at all on the other side.
25 Q. Turn, please, one page over, to column 6, the 10:00:54	25 Q. You've written a book about using markers to 10:03:38
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1	render figures, haven't you?	1	your testimony, you think they could be there, but none
2	A. Uh-huh, yes.	2	are shown in the figures, are they?
3	Q. And I believe you espouse the virtues of detail	3	A. Okay. We have to be very careful about
4	in making drawings and design, don't you?	4	terminology, because one of the -- you asked earlier if
5	A. Yes.	5	there was any confusion in my reading of the patent, but
6	Q. And the details are important to the user;	6	there are some elements of the patent that are described
7	correct?	7	as having a top, a bottom, a left side and a right side.
8	A. Yes.	8	There are other parts that are described as having four
9	Q. And you're an expert on that, aren't you?	9	sides, and so it's not always consistent terminology
10	A. Yes.	10	from one component to the other.
11	Q. Okay. Figure 2, see the finger buttons?	11	Q. Okay, that's fine. What I'm asking you is, are
12	A. Yes.	12	there any figures in the patent that show the buttons on
13	Q. See the base of the finger buttons, the	13	the sides?
14	cross-hatchings? See those?	14	A. On the sides?
15	A. Yes.	15	Q. Yes. Let me try this again.
16	Q. You see those; right?	16	Any figures in the patent of the buttons and
17	A. Yes.	17	orientation, other than this way you see here, in
18	Q. Okay. Do you know what that's supposed to	18	figure 2?
19	represent?	19	A. There's top feeders in figures 3 and 4.
20	A. That is supposed to represent what's described as	20	Q. Right. And the buttons are oriented in view;
21	240. Is it all right if I refer to the patent?	21	correct?
22	Q. Oh, of course.	22	A. There's bottom views in figure 5.
23	A. It refers to the slide base channel surface.	23	Q. I'm sorry. Your contention is figure 5 shows the
24	Q. Right. So the colors, the cross-hatchings,	24	buttons on the bottom of this device, or is it a view
25	that's used to indicate whether or not a dosage is	25	from the bottom up?
	Page 66		Page 68
1	taken; correct?	1	A. From the bottom up of the finger buttons.
2	A. Or not taken.	2	Q. And looking at figure 5, the buttons, specific
3	Q. Or not taken, exactly. Thank you.	3	finger button hole, it would be on the top side,
4	And this part, right, with the finger	4	consistent with figure 2; right?
5	buttons and dosage indicators, faces the user.	5	A. Say that again.
6	A. Can face the user, yes.	6	Q. So from figure 5, you're saying it's the
7	Q. Can the finger button -- let me ask you this.	7	perspective view from the bottom, but the orientation of
8	For this invention, could the finger buttons and the	8	the device is not any different. The finger buttons
9	dosage indicators not face the user?	9	still point to the finger button holes, in the same
10	A. Certainly.	10	orientation as on figure 2; correct?
11	Q. How would that indicate whether a dosage is taken	11	A. Yes.
12	or not?	12	Q. Could you orient the buttons in a different way
13	A. Well, I think that, as a person becomes	13	for the device, like say in a circle?
14	accustomed to using this particular device, they might	14	MR. PEELER: What claim are you asking him
15	hold the vial in a way that the buttons are on this	15	to construe at this point?
16	side, and just by feeling, they know that they can lift	16	MR. HOGAN: I'm asking the question about
17	the switch to one side or the other. So I don't think	17	construction. Do you have an objection outside the
18	they always see it, but certainly, certainly in the	18	scope? Thank you.
19	beginning when they're getting used to the device,	19	MR. PEELER: I just want to understand what
20	they're going to look at it.	20	it is.
21	Q. In this figure 2, the buttons and the indicators	21	BY MR. HOGAN:
22	are on top, right, on this space of the image; correct?	22	Q. You can answer, sir.
23	A. Yes.	23	A. Ask your question again, please.
24	Q. There are no figures in the patent that show	24	Q. Could you have the buttons in a circle?
25	finger buttons on the sides, are there? I understand	25	A. On this device?
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1	Q. Yes.	1	Q. Every single word?
2	A. As it's configured?	2	A. I believe so.
3	Q. Yes.	3	Q. When I say write, I mean you pounded it out on
4	A. Well, are you talking about a circle around the	4	your own computer?
5	device, around the vial?	10:08:22	5 A. Yes.
6	Q. Let's try that one.	6	Q. And this declaration contains all of your
7	A. They could be redesigned so that you could	7	opinions of the claim we're in in this case; right?
8	possibly do that, although it would be -- have a lot of	8	A. Yes, at that time.
9	challenges in terms of manufacturing.	9	Q. At that time. Again, you keep referring to the
10	Q. Okay. Manufactured counters do it that way. How	10	fact that you want to possibly change your opinions.
11	about this? Say like a rectangle, how about a circle	11	A. Yes.
12	like this, not a rectangle, a circle like that. Can you	12	Q. Reserve the right to?
13	do it that way?	13	A. Yes.
14	A. I believe, in the prior art, there are some	14	Q. Am I right in understanding, sir, that you don't
15	devices that are on top of the cap.	10:08:54	have confidence in your declaration as written, that
16	Q. Not on the cap, on the side, a circle on the	15	your opinions might change?
17	side. Does that work?	16	A. There's one item that I want to change.
18	A. Circle on the side? I mean, you could make one,	17	Q. That's the slide base channel; correct?
19	whether or not it would be very usable.	18	A. Yes.
20	Q. Wouldn't work very well; right?	19	Q. We'll get to that in a few minutes.
21	A. Yes.	20	A. Okay.
22	Q. Circle structure wouldn't work very well?	21	Q. Anything else, as of right now, you think you
23	A. I don't think so.	22	want to change?
24	Q. Okay. The rectangular shape of the device, it	23	A. No.
25	fits on the long axis of a pill bottle; right?	10:09:22	Q. Plaintiff's opening brief on claim construction,
			10:12:02
	Page 70		Page 72
1	A. Yes.	1	you read it; correct?
2	Q. Instead of a curved back, so it fits right on the	2	A. Yes.
3	pill bottle; right?	3	Q. Defendant's opening brief on claim construction,
4	A. I believe that's the intent.	4	have you read that?
5	Q. Take out K-5. That's your declaration. I'm	5	A. Yes.
6	going to go through this declaration of yours. This	6	Q. Did you change your mind about slide base channel
7	is -- it says at the top, declaration of Ronald	7	before or after you read defendant's brief?
8	B. Kemnitzer; correct?	8	A. After.
9	A. Yes.	9	Q. After?
10	Q. It was filed March 13th, 2015; right?	10	Exhibit K-4 is plaintiff's opening claim
11	A. Yes.	11	construction brief. Pull that out.
12	Q. And if you look at page 6 of 6, it's --	12	Backing up. Do you have any opinions about
13	when I say page 6 of 6, I'm referring to that legend at	13	claim construction that are not identified in your
14	the top.	14	declaration?
15	A. Yes.	15	A. Not to my knowledge.
16	Q. Page 6 of 6 says: I declare, under penalty of	16	Q. So page 1 is introduction, page 2 has some
17	perjury, that the foregoing is true and correct this	17	irrelevant legal stuff in it. Go to page 3, please.
18	13th day of March, 2015, and there's a signature there.	18	A. Okay.
19	See that?	19	Q. See the subheading about halfway down,
20	A. Yes.	20	construction disputed claim terms?
21	Q. Is that your signature there?	21	A. Uh-huh, yes.
22	A. Yes.	22	Q. Second sentence starts, says: Plaintiff's
23	Q. Okay. Please look back at page 1 of 6.	23	position is that claim terms should be given their
24	Did you write this declaration?	24	ordinary and customary meaning, period. Did I read that
25	A. Yes.	25	right?
			10:13:34
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1 A. Yes.	1 Q. Possible, though?	
2 Q. Therefore, plaintiff did not identify terms for	2 A. It could be possible.	
3 judicial construction; right?	3 Q. Okay. Do you recall arriving at your opinions as	
4 A. Yes.	4 expressed in your declaration?	
5 Q. You've read plaintiff's opening brief. I have to 10:13:46	5 A. Yes.	10:16:38
6 assume you've read your declaration because you signed	6 Q. How did you arrive at them?	
7 it and you wrote it; right?	7 MR. PEELER: Objection.	
8 A. That's a good assumption.	8 THE WITNESS: Well, I read the opening claim	
9 Q. Thank you.	9 constructions of the plaintiff's and the defendants',	
10 The contents of certain paragraphs of your 10:14:06	10 and then I addressed the disputed terms. I researched	10:17:02
11 declaration are almost verbatim, the same as plaintiff's	11 the patent and came to my own conclusions.	
12 opening brief. Did you notice that?	12 BY MR. HOGAN:	
13 A. Yes.	13 Q. Okay. I think defendants' brief was served after	
14 Q. You didn't write plaintiff's opening brief, did 10:14:20	14 plaintiff's brief, so you couldn't have seen defendants'	10:17:24
15 you?	15 brief ahead of time. Is there a draft of your	
16 A. No.	16 declaration in existence?	
17 Q. Do you know who did?	17 A. I don't think so.	
18 A. Mr. Peeler.	18 Q. So when you talk about the plaintiff's	
19 Q. Did you have plaintiff's brief in front of you 10:14:48	19 construction, do you mean the joint claim construction	
20 when you wrote your declaration?	20 brief -- the joint claim construction statement; right?	10:17:56
21 A. I don't recall.	21 You don't mean the brief?	
22 Q. Is it possible?	22 A. That's what I meant.	
23 A. It's possible.	23 Q. And you're referring to the plaintiff's -- also,	
24 Q. So it's possible you wrote your declaration, 10:15:14	24 claim construction. Is that what you mean?	
25 copying right off the plaintiff's opening brief; right?	25 A. No, I'm -- I refer to the joint construction. I	10:18:03
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1 A. No, I didn't copy right off plaintiff's opening	1 did have a copy of the plaintiff's preliminary claim	
2 brief.	2 construction --	
3 Q. How about writing words that seem identical to	3 Q. In front of you?	
4 plaintiff's opening brief in your declaration?	4 A. -- early on in the case.	
5 A. Am I permitted to discuss collaborations with the	5 Q. You had that in front of you when you were doing 10:18:17	
6 client?	6 your declaration?	
7 MR. PEELER: No.	7 A. Yes. Oh, well, I'm not sure that I did have it	
8 BY MR. HOGAN:	8 in front of me. The preliminary claim construction?	
9 Q. You can't tell me?	9 Q. Yes, the joint statement.	
10 MR. PEELER: I don't know what the question	10 A. The joint statement?	10:18:35
11 is.	11 Q. Yes.	
12 THE WITNESS: Would you ask the question	12 A. The joint statement, I may have, but I don't	
13 again, please?	13 recall for sure.	
14 BY MR. HOGAN:	14 Q. Okay. Were you involved in creating plaintiff's	
15 Q. Yes. Did you write your declaration with 10:15:51	15 preliminary claim construction?	10:18:43
16 plaintiff's brief in front of you, and substantially	16 A. We had conversations.	
17 using the same words in plaintiff's brief, and put them	17 Q. With Mr. Peeler?	
18 in your declaration?	18 A. Yes.	
19 MR. PEELER: Hold on. Are you asking if he	19 Q. Were they your proposals for the claim	
20 typed it? Because I typed it, the initial draft. I	20 constructions, or you don't recall?	10:18:56
21 want to make sure the record is clear on that.	21 MR. PEELER: That's just a yes or no	
22 MR. HOGAN: I think the record is clear.	22 question, or an, "I don't recall."	
23 BY MR. HOGAN:	23 THE WITNESS: Say it again, please.	
24 Q. Would you answer my question, sir?	24 BY MR. HOGAN:	
25 A. I don't recall.	25 Q. Were they your proposals?	10:19:06
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1 A. No.	1 identical product.
2 Q. Do you recall anything else you used in coming to	2 Q. You used the phrase one of ordinary skill in the
3 formulate the declaration, the opinions stated in your	3 art in that sentence; right?
4 declaration? I know we have your Exhibit K-1, you	4 A. Yes.
5 consulted that stuff, you said. But anything else you 10:19:22	5 Q. And you wrote that sentence; right? 10:21:50
6 specifically remember using in forming the opinions as	6 A. Yes.
7 expressed in your declaration?	7 Q. What's that phrase mean, one of ordinary skill in
8 A. No.	8 the art?
9 Q. Did you take any notes in the course of preparing	9 A. I just answered that.
10 your declaration? 10:19:35	10 Q. Let me have it again. 10:22:00
11 A. Handwritten notes?	11 A. It's one -- it's a person who, through education
12 Q. Yes.	12 and/or experience, is capable of designing the product
13 A. No.	13 at issue.
14 Q. Typewritten notes on a computer?	14 Q. And that's your definition of a person of
15 A. Yes. I should clarify that. I did a very rough	15 ordinary skill in the art for this patent; right? 10:22:14
16 outline on a computer and then evolved that. So those	16 A. Yes.
17 steps weren't saved.	17 Q. How much education?
18 Q. Those steps weren't saved.	18 A. For this particular product, in all honesty,
19 Did you have any notes, though? I mean,	19 little.
20 conversations, notes about drafts, notes about issues 10:20:20	20 Q. How much is little? 10:22:29
21 you made for yourself? Outlined in my book are notes.	21 A. Well, I would base it on the inventor of it, who
22 If it's not in the form of a declaration, those are	22 had none, from my understanding.
23 notes. Anything that's not the declaration, do you have	23 Q. So you're basing your definition of a person of
24 copies of that?	24 ordinary skill in the art on the inventor?
25 A. I have notes in my file of the -- as I read the	25 A. No, I'm basing how much education one might have,
	10:22:51
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1 patent 20 times, and read the file histories and those	1 based on the inventor.
2 things, I made notes for myself, yes.	2 Q. How do you know the inventor had no education?
3 Q. Okay. Have you talked with anybody or otherwise	3 A. I was told that.
4 communicated with anybody, other than Mr. Peeler, about	4 Q. By whom?
5 claim construction in this case? 10:20:56	5 A. Mr. Peeler.
6 A. No.	6 Q. What kind of experience would a person with
7 Q. Have you e-mailed anybody about the claim	7 ordinary skill in the art have for the 358 patent?
8 construction in this case other than Mr. Peeler?	8 A. Well, anybody who has some knowledge of the issue
9 A. No.	9 at hand, with taking medications and understanding the
10 MR. HOGAN: We asked for production of	10 problems associated with keeping track of whether a
11 witness' notes on claim constructions.	11 medication has been taken or not; somebody who has
12 MR. PEELER: I don't think you're	12 experience taking more than one medication, and that
13 entitled to those.	13 includes just about all of us, I think. And somebody
14 MR. HOGAN: We are.	14 who has some curiosity about how it might be made less
15 MR. PEELER: I don't think you are.	15 confusing and better, and just using practical
16 MR. HOGAN: Factual notes, we're entitled to	16 experience of how things work.
17 production. We can fight about that later. It's on the	17 Through education, industrial designers really
18 record.	18 have a good working knowledge of manufacturing processes
19 BY MR. HOGAN:	19 and materials.
20 Q. Paragraph 3 of your report, second sentence says: 10:21:23	20 Q. I want to stop you -- I'm sorry, go ahead. 10:24:04
21 Testimony is one of ordinary skill in the art.	21 A. But I think it would take a very low level of
22 A. Yes.	22 sophistication of that knowledge for this particular
23 Q. What does that mean?	23 product.
24 A. That means somebody who is qualified, through	24 Q. Okay. So you just told me that a person of
25 education and experience, to have designed a similar or	25 ordinary skill in the art would have little or no 10:24:21
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<p>1 education, and their experience relevant to the fact</p> <p>2 would be taking medications or having problems taking</p> <p>3 medications, or being confused taking it; is that right?</p> <p>4 A. I said that a person could have little or no</p> <p>5 education if it was supplemented -- I didn't say this 10:24:36</p> <p>6 was supplemented by experience.</p> <p>7 Q. Okay. But you keep talking about designers,</p> <p>8 design engineers. If a person of ordinary skill in the</p> <p>9 art, according to your definition, has little or no</p> <p>10 education, and their experience includes taking 10:24:48</p> <p>11 medication, why would what a designer thinks mean</p> <p>12 anything in this case?</p> <p>13 A. Why would what?</p> <p>14 Q. Why would what a designer thinks means anything</p> <p>15 in this case? 10:24:56</p> <p>16 A. Because that's one of the tests for the patent.</p> <p>17 Q. One of the tests for the patent?</p> <p>18 A. Yes.</p> <p>19 Q. What does that mean?</p> <p>20 A. Well, for example of obviousness, the test is for</p> <p>21 a person of ordinary skill in the art, would see that by</p> <p>22 combining this -- an existing design with one or more</p> <p>23 other designs, that you would make the equivalent of the</p> <p>24 design at issue.</p> <p>25 Q. I'm sorry, so you gave me your definition of a 10:25:21</p>	<p>1 A. It is one of them.</p> <p>2 Q. How many people with ordinary skill in the art</p> <p>3 are there, in your mind?</p> <p>4 A. In my mind, I think everybody has ordinary skill</p> <p>5 in the art for something. 10:26:55</p> <p>6 Q. I'm talking about this patent. I just want to</p> <p>7 know if your definition for a person of ordinary skill</p> <p>8 in the art, for purposes of this patent, is everyone.</p> <p>9 Is that fair?</p> <p>10 A. No. 10:27:13</p> <p>11 Q. What is it, then?</p> <p>12 A. A person -- I answered that. A person who has</p> <p>13 experience with taking medications, with the problems of</p> <p>14 taking medications, with the problems of verifying</p> <p>15 dosages taken, somebody with experience and/or knowledge</p> <p>16 of that issue, knowledge of the range of solid oral</p> <p>17 medication vials, and some basic understanding of how</p> <p>18 things are made, how things are -- can work. It may be</p> <p>19 through education or it may just be experience at</p> <p>20 working, using products that have similar kinds of</p> <p>21 actions, flipping a switch and seeing whether it's on or</p> <p>22 off. Combined, all of those elements could result in a</p> <p>23 person capable of designing this product.</p> <p>24 Q. Okay. And I think in your declaration, and in</p> <p>25 plaintiff's opening brief, it's replete with statements 10:28:20</p>
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<p>1 person of ordinary skill in the art with little</p> <p>2 education, and experience includes taking medications or</p> <p>3 being confused by medication. Then you say a person of</p> <p>4 ordinary skill in the art would also have opinions about</p> <p>5 design and obvious analysis. That's what you just told 10:25:35</p> <p>6 me. So is the person with ordinary skill in the art any</p> <p>7 of those? Is that your testimony, sir?</p> <p>8 A. I think I said that it could be any of those,</p> <p>9 yes. In this particular case it's not a complicated,</p> <p>10 highly technical product. It's something that requires</p> <p>11 very little experience in terms of manufacturing and</p> <p>12 materials in order to develop the idea concept.</p> <p>13 Q. Okay. And yet -- so given your testimony just</p> <p>14 now, why does it matter what a designer thinks, if the</p> <p>15 person with ordinary skill in the art has little</p> <p>16 education and experience only taking medication?</p> <p>17 MR. PEELER: Objection.</p> <p>18 BY MR. HOGAN:</p> <p>19 Q. Can you tell me that, sir?</p> <p>20 A. I didn't say that. 10:26:30</p> <p>21 Q. You didn't say that?</p> <p>22 A. No.</p> <p>23 Q. Okay. So if a designer could have opinions</p> <p>24 relevant to what's obvious, by obvious designs, is that</p> <p>25 the person with ordinary skill in the art, a designer? 10:26:37</p>	<p>1 that the claim terms at issue have a plain, ordinary</p> <p>2 meaning; right?</p> <p>3 A. Uh-huh, yes.</p> <p>4 Q. How did -- so you gave me your opinion what you</p> <p>5 believe to be a person of ordinary skill in the art is. 10:29:09</p> <p>6 How did you arrive at that?</p> <p>7 A. By studying the device, by the patent, complexity</p> <p>8 of the patent, and that's pretty much it.</p> <p>9 Q. Okay. Given that, are you a person of ordinary</p> <p>10 skill in the art for this patent? 10:29:35</p> <p>11 A. Yes.</p> <p>12 Q. Am I?</p> <p>13 A. I don't know what your knowledge of manufacturing</p> <p>14 methods are.</p> <p>15 Q. I read the patent and the file history. 10:29:42</p> <p>16 A. Okay.</p> <p>17 Q. I've taken drugs.</p> <p>18 A. Have you ever made anything?</p> <p>19 Q. So are you saying to me now, that a person of</p> <p>20 ordinary skill in the art needs that knowledge of 10:29:55</p> <p>21 manufacturing; is that correct?</p> <p>22 A. I did say that.</p> <p>23 Q. Okay.</p> <p>24 A. I did say that. I said it could be as a result</p> <p>25 of just using things, understanding how simple</p>
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1 mechanisms work, and then translating that knowledge 2 into this design.	1 Q. Okay. Patent, file history, definition? 2 A. Yes.
3 Q. So in your mind that means -- that's 4 manufacturing. You didn't say manufacturing. You said 5 it a second time. So manufacturing, a person of 6 ordinary skill needs a knowledge of manufacturing as 7 well; right?	3 Q. Okay. Nothing further; right? 4 A. Not to my knowledge, that I can remember at this 5 moment.
8 A. Well, I may have been too general and said 9 mechanical activities, mechanical. I mean, if a person 10 has enough curiosity to look at a wall switch and 11 examine the flipping of it or the sliding of it, and 12 even taking that apart, I think they probably can 13 generate enough technical knowledge to have designed 14 this product.	6 Q. So would a person of ordinary skill in the art 7 need to consider anything other than the patent style 8 history to understand the words in the patent? I 9 understood you used some definitions, but I'm asking 10 you, a person of ordinary skill in the art, could it be 11 the patent itself, including the figures and the file 12 history, and understand the claims?
15 Q. You say in your declaration a few times, the 16 customary and ordinary meaning; right?	13 A. That's a broad statement. Would you repeat it 14 again, please? Sorry for asking you to do that, but I 15 want to be correct.
17 A. Yes.	16 Q. That's fine. That's fine. 17 Can you tell me, would a person of ordinary 18 skill in the art need to consider anything other than 19 the patent and the file history to understand the claim?
18 Q. What's that mean?	20 A. I think some could. I think others might benefit 21 from looking at the actual commercial embodiment of the 22 patent to understand the claim.
19 A. Well, a customary and ordinary meaning, I think, 20 depends on context. For instance, the term channel. If 21 you're standing in an irrigation field, it may have one 22 meaning; if you're watching television, it may have 23 another meaning; and in this particular case, it has yet 24 another meaning.	23 Q. The commercial embodiment? 24 A. Yes.
25 Q. So the shape or structure of channel varies from	25 Q. What's the commercial embodiment? Have you seen
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1 use to use; is that your testimony? 2 A. No, that's not my testimony.	1 it? 2 A. Yes.
3 Q. Your testimony is the meaning of the word channel 4 is different, depending on where it's used, in a field, 5 as a device in this case --	3 Q. How many switches does it have on top, how many 4 slides? Four or seven?
6 A. Yes.	5 A. Yes.
7 Q. -- for a guy in the street sweeping the gutters? 8 A. Uh-huh.	6 Q. Both? 7 A. Yes.
9 Q. But isn't it true the essential physical 10 properties of channel never change? Same shape; right?	8 Q. Did you consider that in forming your opinion in 9 your declaration?
11 How else would you know what a channel is?	10 A. Consider what?
12 MR. PEELER: Object; compound.	11 Q. Let me ask this question. When you formulated 12 the opinions in your declaration, did you consider the 13 commercial embodiment of the claimed invention in this 14 patent?
13 THE WITNESS: Well, my interpretation of 14 channel as it applies to this particular patent, has 15 been informed by a combination of definitions, word 16 definitions, and what's illustrated in the patent.	15 A. No.
17 BY MR. HOGAN:	16 Q. But you're -- so you're telling me that for a 17 person of ordinary skill to understand the claims, they 18 would have to read the patent, the file history, and it 19 might be beneficial to look at the commercial embodiment?
18 Q. And the word definitions is one that was produced 19 to us this morning; right?	20 A. Yes.
20 A. Yes.	21 Q. When you say "the," and when I said commercial 22 embodiment, does it have four slides or seven slides, 23 you said yes. So in your mind, those two items are 24 interchangeable; right?
21 Q. Anything else you considered besides the patent? 22 We'll assume the file history, and the definition you 23 produced this morning.	25 Page 89
24 A. And working in conjunction with the illustration 25 of the patent.	10:35:19
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1	A. The patent does not define how many buttons it	1	accused product, which is in one of the exhibits that
2	has. It's the plurality of buttons, so I would assume	2	are listed in the materials.
3	two or more.		
4	Q. Which embodiments have you seen?	3	Q. Do you plan on preparing and serving a follow-up
5	A. I've seen the Duer embodiment and the accused	4	report?
6	product.	5	A. Yes. 10:37:40
7	Q. The Duer embodiment had four slides; right?	6	MR. PEELER: Hold on.
8	A. I believe so.	7	THE WITNESS: If asked.
9	Q. And the accused device has seven slides?	8	MR. PEELER: Thank you.
10	A. Seven slides. 10:35:55	9	MR. HOGAN: If he provides a report, we
11	Q. Do you know who manufactured either of those two	10	reserve the right to depose him again on that report. 10:37:52
12	items?	11	MR. BURWELL: And just to be clear, a
13	A. Do what?	12	follow-up report related to claim construction?
14	Q. Do you know who manufactured those two items?	13	MR. PEELER: It's his question. Ask him.
15	A. I believe the accused product was manufactured by	14	MR. HOGAN: His answer.
16	one of the defendants. 10:36:03	15	MR. PEELER: Ask him what he meant by the
17	Q. And the Duer version with four slides, who made	16	question. 10:38:04
18	that?	17	BY MR. HOGAN:
19	A. I don't know. I don't know the name.	18	Q. Did you understand what I meant by the question,
20	Q. You said that the seven slide, you think was made	19	sir?
21	by one of the defendants. How do you know that?	20	MR. PEELER: I did not. 10:38:07
22	A. I was told that.	21	THE WITNESS: You asked if I was going to
23	Q. By whom?	22	prepare another report.
24	A. Mr. Peeler.	23	BY MR. HOGAN:
25	Q. Could it have been made by Duer? 10:36:24	24	Q. Yes, on claim construction.
	Page 90	25	A. I don't think you said claim construction. 10:38:12
	Page 90		Page 92
1	A. Well --	1	Q. I'm clarifying. On claim construction.
2	MR. PEELER: What, the accused device was	2	A. No.
3	made by her?	3	Q. No?
4	MR. HOGAN: Object or be quiet.	4	A. I think we'll file --
5	BY MR. HOGAN: 10:36:36	5	MR. PEELER: Don't guess about what I might
6	Q. Do you understand the question?	6	ask you to do for me. 10:38:20
7	MR. PEELER: Objection. I don't understand	7	BY MR. HOGAN:
8	the question.	8	Q. In other words, it's possible you may prepare
9	BY MR. HOGAN:	9	other declarations in this case, on other issues. Is
10	Q. Do you understand the question, sir? 10:36:42	10	that what you mean to say? 10:38:30
11	A. Ask it again, please.	11	A. If asked.
12	MR. HOGAN: Would you read it back to him	12	Q. Understood.
13	before the colloquy, please.	13	Turn to paragraph 5 of your declaration,
14	(The record was read by the reporter as	14	please. You read that paragraph; right?
15	requested.) 10:36:57	15	A. Uh-huh. 10:38:46
16	MR. PEELER: Objection.	16	Q. What's your definition of front plate? Sorry.
17	BY MR. HOGAN:	17	Let me ask that again.
18	Q. Could the seven-slide version have been made by	18	What's your construction of front plate?
19	Duer?	19	MR. PEELER: I'm going to object to that.
20	A. It looks to me like it could have been, yes. 10:37:03	20	The court's going to construe the claim terms. 10:39:03
21	Q. Do you know for a fact whether the one you saw	21	BY MR. HOGAN:
22	with seven slides was made by Duer or made by the	22	Q. You can answer.
23	defendants?	23	MR. PEELER: Subject to that, you can
24	A. I believe that the one that I saw with the seven	24	answer.
25	slides matched one of the photographs that I saw of the	25	BY MR. HOGAN: 10:39:12
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1 Q. I'm looking at paragraph 5 of your declaration.	1 A. Now, I understand -- I don't think it gives an
2 That's what I'm asking you about. What's it state	2 unusual meaning. I think it refers to the overall
3 there?	3 structure of that particular part, which is referred to
4 A. It means the front structure of the dosage strip.	4 in the abstract as the front plate, one of the three
5 And I can refer to figure 1 and point out what I'm	5 main components.
6 referring to.	10:42:01
7 Q. Possibly. Let me ask you. So in paragraph 5 of	6 Q. And your opinion is the ordinary and customary
8 your declaration in this case, in support of claim	7 meaning of the front plate is what's stated in
9 construction, there's no citation in this paragraph to	8 paragraph 5; right?
10 anything; isn't that true?	9 A. Yes, it's the plate on the front.
11 A. That's true.	10 Q. Do you think the meaning of front plate is clear,
12 MR. PEELER: I object to that.	11 after considering the patent and the file history?
13 THE WITNESS: I refer to the patent in the	12 A. Yes.
14 file history.	13 Q. What's the ordinary and customary meaning of the
15 BY MR. HOGAN:	14 word plate?
16 Q. Where? Not in paragraph 5, you don't.	15 A. In my understanding as a designer, it is a panel.
17 A. In context of the patent and file history.	16 For instance, it can have a lot of different meanings.
18 Q. But you cite nothing specifically, no pages, no	17 A plate, there's a wall plate right over there on the
19 line numbers; right?	18 wall, a switch. That's a plate. There's a plate,
20 A. No.	19 serving plate. There are plates on a ship.
21 Q. There's no extrinsic evidence, no dictionary	20 Q. Those are examples of a plate. What's plate
22 cited here.	21 mean?
23 A. No.	22 A. A plate means a structure.
24 Q. No treatise cited here.	23 Q. A structure?
25 A. No.	24 A. Yes.
	25 Q. This arm of this chair I'm sitting in is a
	10:43:29
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1 Q. No publication cited here.	1 structure. That's also a plate by your definition;
2 A. No.	2 correct?
3 Q. That's your opinion; correct?	3 A. No, it's a structure. A plate can be flat, it
4 A. Yes.	4 can be rounded.
5 Q. Given this paragraph 5 being the embodiment of	5 Q. None is provided in paragraph 5, is it, that you
6 your opinion, do you think you need to provide any	6 just told me? It's not there, is it?
7 additional explanation for the meaning of this term?	7 A. No.
8 A. No.	8 Q. In your declaration, you said there's nothing in
9 Q. You said see figure 1. Is all of your opinion	9 the patent -- go to exhibit -- just to make it easier,
10 about the meaning of front plate contained in	10 open K-4 next to your declaration, make your life
11 paragraph 5 of your declaration?	11 easier. I think you have it right there.
12 A. Yes, the front structure of the assurance dosage	12 On page 4 you say at the bottom, last
13 strip.	13 sentence or so: There's nothing in the patent or its
14 Q. Yet you want to see figure 1 to point that out?	14 file history that adds the requirement that the front
15 A. If you ask me to, I will.	15 plate be, quote-unquote, thin, contrary to thin as
16 Q. You didn't say figure 1 here in paragraph 5, did	16 proposed construction. You wrote that there; right.
17 you? No, you didn't. That's okay. I know the answer.	17 MR. PEELER: Where?
18 In your view, does the patent give any	18 MR. HOGAN: Page 4 of Exhibit 4. I'm sorry,
19 unique or uncommon meaning to the term front plate?	19 page 4 of the brief.
20 A. Are you...	20 MR. PEELER: He didn't write the brief. He
21 Q. We're on paragraph 5 still.	21 didn't tell you about the brief.
22 A. Ask the question again.	22 BY MR. HOGAN:
23 Q. Absolutely. In your opinion, does the patent	23 Q. I'll read from your declaration, which is
24 give any unusual or uncommon meaning to the term front	24 virtually verbatim to the brief. It says: Nothing in
25 plate?	25 the patent adds the requirement that the front plate be,
	10:44:50
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1 quote-unquote, thin. See that?	1 You don't need to clarify it for him. I'm asking him
2 A. Yes.	2 the questions, not you.
3 Q. Could the device work if the plate was thick?	3 BY MR. HOGAN:
4 A. The plate is not of uniform thickness. The plate	4 Q. Pardon me, sir, I'm sorry. Let's go back to
5 also includes the structure on the bottom side, which	5 where we were, shall we?
6 has ribs. I think it cannot be described as thin	6 A. Yes.
7 because it...	7 Q. I asked you a question, could the plate be thick.
8 Q. It's your testimony --	8 We're talking about the term front plate in the patent.
9 MR. PEELER: Hold on.	9 We're looking at paragraph 5 of your declaration. You
10 Were you finished with your answer?	10 say: Defendants' construction is wrong because in
11 THE WITNESS: No -- yes, I am finished.	11 another climate it would be thin. Could the front plate
12 BY MR. HOGAN:	12 be thick?
13 Q. Okay. You just testified that the plate includes	13 A. Nowhere in the patent is it described as thick or
14 the bottom side as well; is that correct?	14 thin, but the illustration in figure 1 shows it to be
15 A. Yes.	15 of -- in a dimension from the top surface to the bottom
16 Q. Of the plate or of the device? I'm not sure I	16 surface, varying thicknesses.
17 understand.	17 I think thin is a limiting definition of it,
18 MR. PEELER: I'm going to object that	18 because I can see clearly in figure 1, three separate
19 there's more than one plate referenced, and I want to	19 thicknesses.
20 make sure we get a clear record.	20 Q. Three separate thicknesses.
21 MR. HOGAN: Stop coaching the witness,	21 A. Are you talking --
22 Charlie. You can object. Don't say anything.	22 Q. Figure 1. Three separate structures in figure 1?
23 MR. PEELER: What I'm not going to do is sit	23 Are you talking about --
24 here --	24 A. Three separate --
25 MR. HOGAN: It's clarified. You tried to do	25 Q. -- the front plate?
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1 that. You have to be quiet.	1 A. The front plate has three separate thicknesses.
2 MR. PEELER: It's your job to trick him by	2 It's shown.
3 not using the terms that are in the patent.	3 Q. Point them out.
4 MR. HOGAN: It's a term he used. Object to	4 A. This edge, this edge, that edge. Those are
5 vague.	5 thicknesses. That they extend is not a complete
6 MR. PEELER: In your question, you're	6 definition of it.
7 talking about --	7 Q. You say in your CV and your personal statement of
8 MR. HOGAN: Stop talking, Charlie.	8 professional experience, you're -- you have experience
9 MR. PEELER: In your question you're talking	9 in manufacturing and industrial design; right?
10 about front plate, and then you drop the front, and you	10 A. Uh-huh.
11 start talking about the plate. You know there's	11 Q. Isn't it true, when you make consumer devices,
12 something called a face plate. So ask a clear question	12 and devices like this, the thickness of the device for
13 and I won't object.	13 molded plastic should be uniform; isn't that true?
14 MR. HOGAN: Are you done coaching the	14 A. Not necessarily at all.
15 witness, Charlie?	15 Q. When is that not necessarily true?
16 MR. PEELER: I never began.	16 A. All the time. All the time.
17 MR. HOGAN: You just did. All this colloquy	17 Q. Based on?
18 was completely irrelevant.	18 A. Well, the particular need of the product.
19 Here's the story. We'll go back and review	19 Q. Is there a need in this instance, that you're
20 Rule 30 again. I'm sure you've not read that one. You	20 aware of?
21 can object to form or on privilege.	21 A. No, not at all.
22 The coaching and the talking, if he's not	22 Q. Why don't you look at the patent, paragraph 6.
23 sure what a question means, I expect of you this	23 I'm sorry, column 6. Column 6, starting at Line 25.
24 morning, ask for clarification. I'll gladly give it.	24 I'm going to read 25 to about 27: The assurance dosage
25 I'll ask a new question, or I'll read the question back.	25 strip is dimensioned to be placed on a container, e.g.,
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1 medicine vial, vitamin bottle, etc., to facilitate the	1 A. Yes.
2 proper taking of the contents of the container. See	2 Q. Okay. In paragraph 6 you state: The front plate
3 that?	3 body means the body of the front plate.
4 A. Uh-huh, yes.	4 A. Yes.
5 Q. That doesn't suggest to you that the device 10:49:52	5 Q. Right? You provide no explanation for that 10:52:36
6 itself should also be thick and uniform so the pill	6 meaning, no rationale, no details here; isn't that
7 bottles can be attached to it?	7 right?
8 A. No, it doesn't say that to me.	8 MR. PEELER: Objection.
9 Q. As an expert designer, you think -- that says	9 THE WITNESS: Correct.
10 that to you; right? That doesn't suggest that? 10:50:09	10 BY MR. HOGAN: 10:52:49
11 MR. PEELER: Objection; vague.	11 Q. Correct. The next couple sentences of
12 THE WITNESS: Wasn't your question the front	12 paragraph 6, you say why the defendant's construction is
13 plate?	13 incorrect; right?
14 BY MR. HOGAN:	14 A. Say that --
15 Q. Yeah. 10:50:16	15 Q. I'm sorry, I'll say that again. The next two 10:53:03
16 A. The front plate doesn't come in contact with the	16 sentences of paragraph 6 and to the end of paragraph 6,
17 pill bottle.	17 you give reasons why you believe defendant's
18 Q. But the device --	18 construction of front plate body is wrong; right?
19 A. The back plate.	19 A. Well, I also say in the context of the patent and
20 Q. The device is on the pill bottle, right, and the 10:50:22	20 file history, which includes the images of the patent as
21 front plate is part of the device?	21 well as the keys to the patent, which are here. The
22 A. No, I interpret that as referring to the back	22 front plate is number 100, which includes that entire
23 plate, not necessarily the front plate. The front plate	23 structure.
24 could be any shape and it could still be attached to the	24 Q. Okay, so let's try it again. So paragraph 6
25 container. 10:50:49	25 consists of three sentences; right? 10:53:49
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1 Q. It could be a circle?	1 A. Okay.
2 A. It's irrelevant as to what it would be, but if	2 Q. The first sentence says: In the context of the
3 the back plate is curved, and the same curvature as the	3 patent and file history, the front plate body means the
4 container, it can be attached. The front plate could	4 body of the front plate.
5 have spikes on it and it's still attached to the	5 A. Yes. 10:54:03
6 container, which is what this says. It doesn't, in my	6 Q. The other two sentences, you talk about why the
7 mind, predicate the shape of the front plate.	7 defendants' construction is wrong; right?
8 Q. Does the word spikes appear in the paragraph I	8 A. Right.
9 just read? Is that what your testimony is?	9 Q. Okay. In paragraph 6 you provide no rationale
10 A. My testimony is that this paragraph, line 23 --	10 and no description why you think front plate body means 10:54:14
11 25, in column 6, does not address the shape or	11 the body of the front plate. All you have is the one
12 configuration of the front plate.	12 sentence here; right?
13 Q. I was talking about the thickness, though. Still	13 A. I think that's sufficient.
14 the same testimony? It doesn't affect the thickness of	14 Q. Okay. And you make no such cite to the patent
15 the front plate? 10:51:39	15 and the file history; right? 10:54:29
16 A. No.	16 A. I do not call out those numbers, but I refer to
17 Q. All right. Let's go to paragraph 6 of your	17 the fact that the patent, and file history in
18 report. Do you have that in front of you? That's K-5.	18 particular, the patent clearly states that.
19 A. I'm sorry?	19 Q. You make no specific cites to the patent, file
20 Q. We're on your report, K-5, paragraph 6. 10:51:57	20 history in paragraph 6; right? 10:54:43
21 A. My declaration?	21 A. No.
22 Q. Yes. I said your report; I'm sorry, I mean	22 Q. You make no specific cite to --
23 declaration.	23 A. Except that I consider in the context of the
24 It's on the bottom of page 1 and it goes to the	24 patent to be a specific reference.
25 top of page 2. Got that? 10:52:16	25 Q. With no column, no line number, no page listed 10:54:52
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1	here. Answer me that. You have no column, no line		1	plate body, that's not in your declaration, is it? It's
2	number, no page in paragraph 6; isn't that true?		2	one sentence, without the explanation you just gave me;
3	A. I didn't see that in these either. I didn't feel		3	right?
4	it was necessary to do that.	10:55:10	4	A. Right.
5	Q. That's fine.		5	Q. Paragraph -- column 7, line 37 of the patent,
6	A. I didn't see those citations even in the joint		6	I'll read that sentence to you: The front plate, 100,
7	claim construction.		7	is comprised of a front plate body, 110, a face plate,
8	Q. Okay. I appreciate that. The fact is, they're		8	115, a rib edge, 120, et cetera, et cetera. See that?
9	not in your declaration, are they?		9	A. Yes.
10	A. No.	10:55:23	10	Q. Okay. Isn't the numeral 110 labeled in figure 1?
11	Q. You cite no publication, no treatise, no article?		11	A. Yes.
12	A. No, I did cite a publication. I cited the		12	Q. Yes, it is. I guess, does the patent give unique
13	patent.		13	or uncommon meaning to this claim term, front plate
14	Q. No other publications, no treatise, no articles,		14	body?
15	no scholarly articles --	10:55:34	15	MR. PEELER: Objection; asked and answered.
16	A. No.		16	THE WITNESS: Yes.
17	Q. -- correct?		17	BY MR. HOGAN:
18	Do you think the patent gives the term front		18	Q. It gives a unique, uncommon meaning to it?
19	plate body a unique or uncommon meaning?		19	A. Uncommon? What do you mean by uncommon?
20	A. I think --	10:55:47	20	Q. I'm asking you, does it? Is the meaning of front
21	THE VIDEOGRAPHER: Excuse me. Could you		21	plate body in this patent unique and uncommon?
22	move the paper off of the microphone.		22	A. I don't know that it's uncommon. I will say that
23	THE WITNESS: Oh, I'm sorry.		23	it took me a little bit of time reading through this
24	Do you mind if I tear these pages apart?		24	numerous times, and going through the numbering system
25	BY MR. HOGAN:	10:56:15	25	and the descriptions, to really get my mind wrapped
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1	Q. I gave you a set of documents for that purpose.		1	around what they are describing, as compared to the
2	Here's the exhibit. You can tear that one up as you see		2	numbers and the illustrations.
3	fit.		3	Q. Do you think front plate body in this patent has
4	A. I will say that there are a lot of numbers		4	its ordinary and customary meanings?
5	referring to these illustrations, and I confess that I	10:56:40	5	A. Yes.
6	have not memorized all of the numbers and their		6	Q. Okay. Do you think the meaning of front plate
7	corresponding names. So having this will help me.		7	body is clear, after considering the patent figures?
8	Q. So I guess my question I have asked, I'll reask		8	A. Yes.
9	it after you've looked at the documents for a second.		9	Q. I want to -- so the term is front plate body;
10	Does the patent give the claim term front plate body an	10:57:05	10	right? We agree on that?
11	uncommon or unique meaning?		11	A. Yes.
12	A. I think in order for me to get my mind wrapped		12	Q. Okay. I want to ask you a related question.
13	around that, I had to really sort out the numbering		13	What's the customary and ordinary meaning of body?
14	system on the patent and its correlation to the terms.		14	A. Body refers to an overall structure.
15	And this 100 is pointing to that top plate, but not	10:57:30	15	Q. In plaintiff's construction, a front plate body
16	touching it, and it says the front plate body is		16	is the body of the front plate?
17	comprised of the front plate body, or the front plate is		17	A. Yes.
18	comprised of a front plate body, 110.		18	Q. And the body is the overall structure?
19	Now, that's not pointing to any of these		19	A. Yes.
20	other elements, so my interpretation of what the front	10:57:57	20	Q. You don't provide a definition or explanation of
21	plate body is, is just that, front plate body, devoid of		21	body in your declaration, do you?
22	finger button holes, Braille knobs, et cetera.		22	A. No. Only in terms of referring to the patent,
23	Q. And I will direct you briefly, sir -- I want to		23	which refers to it as that.
24	ask two things. The description you just gave me in		24	Q. I'm going to look at that real quick. Keep your
25	support of your construction or understanding of front	10:58:21	25	dec. open. You have figure 1 there; right?
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1 A. Yes.	1 finger holes, but that -- the patent doesn't limit it to
2 Q. Okay. Go to figure 1. Front plate body is 110;	2 four finger holes, it allows for expansion of the number
3 right? See that?	3 of finger holes.
4 A. Yes.	4 That's accomplished -- in this particular
5 Q. And the face plate is 115.	5 version of this, the face plate is raised from the
6 A. Yes.	6 surface of the --
7 Q. See that?	7 Q. Front plate body?
8 A. Yes.	8 A. -- front plate body to create the area in which
9 Q. The finger button holes and dosage indicators are	9 the slide, the cavities are going to be created. So the
10 shown in figure 1 on the face plate; right?	10 face plate, in order to accommodate this flexibility
11 A. Yes.	11 that's a part of the patent, can expand, or can get
12 Q. And in 110, there's no finger button hole or	12 longer or shorter. So the face plate is that portion of
13 dosage indicator shown; right?	13 the front plate that is raised. That can change. Okay?
14 A. Yes.	14 So conceivably, if you added enough holes,
15 Q. In this figure 1, in this -- actually, figure 1,	15 like seven, the face plate could extend from top to
16 all the figures in the patent, is there a dosage	16 bottom, and this surface that you want to refer to as a
17 indicator or a finger button on the front plate body, at	17 separate element could disappear, and that's --
18 space 110?	18 Q. So -- I'm sorry, go ahead.
19 A. Space 110 includes the base plate.	19 A. And also, in my mind, that's been clarified by
20 Q. That's not what I asked you, sir. Does any	20 the numbering system, where all of the principal
21 figure in the patent show a finger button hole, a finger	21 elements of the design are numbered in 10s. So it's
22 button, or a dosage indicator on space 110?	22 110, 120, 130, and you can see that the face plate is
23 A. No.	23 number 115, which tells me that it's a subset of 110.
24 Q. No.	24 Q. And in that seven-hole embodiment; right?
25 A. I take that back. Again, 110 includes part	25 A. Yeah.

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1 number 115, which is the face plate. The patent -- I	1 Q. Structure 110 couldn't exist; right?
2 can explain my rationale for this.	2 A. It disappears.
3 Q. And none of this is in your declaration, by the	3 Q. It disappears, it's not there?
4 way; correct?	4 A. Not there. Now, no, no, 110 doesn't disappear.
5 A. No.	5 110 is still the overall structure. It's just that
6 Q. The explanation you're giving me now.	6 recess, that lower level that goes away.
7 A. No.	7 Q. I think, when you say 110 of the overall
8 Q. None of it's there?	8 structure, 100 is the front plate, and you referred to
9 A. No.	9 the arrow. Front plate body is not the overall
10 Q. In this --	10 structure, front plate is; correct?
11 MR. PEELER: Hold on. He wasn't done.	11 A. Front plate is everything.
12 THE WITNESS: No.	12 Q. On the front plate?
13 BY MR. HOGAN:	13 A. It's the front plate body, the holes, the
14 Q. You weren't done?	14 Braille, all of those things.
15 A. No, I wasn't finished.	15 Q. Does element 110 include element 120, under your
16 Q. Go ahead.	16 opinion?
17 A. Number 100 -- the way they have numbered the	17 A. Well, no. I think those, in terms of them all
18 patent drawing is on figure 1 there's a 100, 200, 300.	18 being -- if we look at 100 as being the overall,
19 Those arrows do not -- they point to those three basic	19 everything, I think 110 and 120 are two separate
20 structures that are in the abstract.	20 elements.
21 110 refers to the face plate body. We know	21 Q. And 140 would be a separate element as well;
22 in the patent that it has a plurality of finger holes.	22 right?
23 The finger holes can change. There could be anywhere	23 A. Yes.
24 from two to as many as you can cram on there.	24 Q. How does 110 differ from 100?
25 This preferred embodiment illustrates four	25 A. 110 is a component of 100. One of several

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1 components of 100.	1 A. Uh-huh.
2 Q. Take a look on page two of your declaration.	2 Q. You're relying on that; right?
3 Paragraph 7 starts out: In the context of the patent	3 A. Uh-huh.
4 and file history, the term front plate top side means	4 Q. So you think front plate, top side, is a
5 surfaces of the front plate generally visible to the	5 preferred embodiment of the patent; is that correct? I
6 user during normal use. Did I read that right?	6 mean it's here in your report. Or your declaration,
7 A. Uh-huh.	7 rather.
8 Q. Okay. So the term here is front plate, top side.	8 A. Which one of these are you on now?
9 The second sentence says: Front plate, top side, in	9 Q. We're on -- Exhibit 5 is your report, paragraph 7
10 quotes, simply refers to the top side of the front plate	10 that you have right there. We're in the plaintiff's
11 as distinguished from the bottom side of the front	11 brief now, I believe; right?
12 plate. Did I read that sentence correctly?	12 A. The only difference -- I'm sorry.
13 A. Yes.	13 Q. I can reask the question, if you want.
14 Q. And there's a cite there that says see, e.g.,	14 A. Ask the question, because I'm afraid I'm not...
15 column 7, line 21; right?	15 Q. No problem. Absolutely.
16 A. Uh-huh.	16 So we're looking at your definition of
17 Q. Okay. Then if you look at the next two sentences	17 paragraph 7, and you've supplied this cite to the second
18 of paragraph 7, read them to yourself and let me know	18 sentence of paragraph 7. That's column 7, line 21 of
19 when you're done.	19 the patent at issue. I read that line to you, line 21,
20 A. What am I reading?	20 for context. The technology disclosed herein will now
21 Q. The next two sentences of paragraph 7 of your	21 be described in -- that's line 20. Line 21 states:
22 declaration.	22 Detail with reference to at least one preferred
23 A. Starting with "contrary"?	23 embodiment. And that's line 21.
24 Q. Yes.	24 A. Yes.
25 (Brief pause.)	25 Q. So your opinion is that front plate, top side,
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1 BY MR. HOGAN:	1 the construction of that is based on the one preferred
2 Q. Finished?	2 embodiment in the patent; is that right?
3 A. Uh-huh.	3 A. No, it's because there is one preferred
4 Q. Those two sentences there, you're stating why you	4 embodiment. There's other embodiments, and that's --
5 think defendants' construction is wrong; right?	5 that has been what has helped me understand that there
6 A. Uh-huh.	6 could be more embodiments, more finger holes in that
7 Q. Okay. So the first two sentences of paragraph 7	7 area, to expand.
8 talk about plaintiff's construction, the second two	8 I, frankly, have very little difference of
9 sentences of paragraph 7 talk about defendants'	9 opinion between these two constructions, except that
10 construction; right?	10 yours says user-facing surface of the front plate, and
11 A. Uh-huh.	11 ours refers to surfaces.
12 Q. So this is the only rationale you provide in the	12 Q. That was actually as of a month ago, but be that
13 first two sentences of paragraph 7 about the meaning of	13 as it may.
14 that claim term; right?	14 A. This is my opinion.
15 A. Uh-huh.	15 Q. That's your opinion, thank you.
16 Q. No further description, no explanation, just the	16 Multiple embodiments. So putting out of
17 two sentences; right?	17 your mind the seven-slide embodiment, because you know
18 A. Right.	18 in the figures it describes -- I'll just leave it to the
19 Q. And then you reference column 7, line 21. Turn	19 figures. In the 358 patent there's only one embodiment
20 to column 7, line 21, please. And that's -- the middle	20 shown, and it has four slides; right?
21 of the paragraph, that says -- I'll read the first	21 A. (No audible answer.)
22 sentence: The technology disclosed herein will now be	22 Q. And all the drawings in the patent are different
23 described in -- that's Line 20. Line 21 -- in detail	23 perspectives of the same four-slide device, aren't they?
24 with reference to at least one preferred embodiment.	24 A. Uh-huh, yes. The patent is extremely clear that
25 That's line 21; right?	25 there could be more.
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1	Q. More embodiments. For example, there could be		1	I think you testified earlier 110 and 120 are different,	
2	Braille indicators; right?		2	110 and 140 are different; right? They're not the same?	
3	A. But they also indicate, I think -- I recall they		3	A. Yeah, they're different. They're different	
4	actually say they go to more numbers. They name numbers		4	surfaces.	
5	of buttons, 1, 2, 3, 4, 5, 6.	11:14:28	5	Q. But 115 is different?	11:17:31
6	Q. You're referring to protrusions and pinholes.		6	A. Yeah, so that's why I say surfaces.	
7	There's no numbered buttons in the claims.		7	Q. Surfaces, that's not a typo, that's intentional, surfaces, plural?	
8	A. You may be right, I may be wrong.		8	A. Yes.	
9	Q. Look at claim 2, column 8, about a third of the		9	Q. So your interpretation of front plate, top side, singular, encompasses plural; right?	11:17:41
10	way down.	11:14:48	10	A. Yes.	
11	A. I'm sorry?		11	Q. Based on column 7, line 21? That's the cite you give here.	
12	Q. I was pointing to claim 2. Where are you?		12	A. Well, it's based more on looking at the	11:17:56
13	A. In column 6, line 18, the front of the plate may		13	illustrations.	
14	have visual and/or tactile indicators corresponding to		14	Q. None of which you cite in your declaration.	
15	each slide to indicate first dosage, second dosage,	11:15:04	15	A. Other than saying based on the patent, context of	
16	third dosage, fourth dosage, et cetera.		16	the patent.	
17	Q. So you're interpreting that to give more slides?		17	Q. None of which you cited here, just column 7, line 21; right?	11:18:07
18	A. Yes.		18	A. Yes.	
19	Q. Okay. So based on that -- there's nothing shown		19	Q. Okay. Do you think this claim term, front plate, top side, has a unique or uncommon meaning in the	
20	in the patent, but based on that line, you think there's	11:15:18	20	patent?	11:18:20
21	more embodiments disclosed by the patent; is that right?		21	Page 118	Page 120
22	A. Yes, plus the numerous references in the patent		22		
23	to -- that this is only one of many possible		23		
24	embodiments.		24		
25	Q. Do you know of any more references to embodiments	11:15:31	25		

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1	claim term. Is that your testimony, sir?	11:19:53	1	it quickly.	11:23:36
2	A. I can tell you that it's my -- for me, it's a		2	Q. So generally doesn't describe angle. You're	
3	plain, ordinary, understandable meaning.		3	looking at the top and you can see the side as well.	
4	Q. Okay. And you can understand that clear meaning		4	That's not included there?	
5	from reading the patent and file history?	11:19:53	5	A. Generally, you would look at the front surface.	11:23:52
6	A. Yes.		6	You would see the side surfaces.	
7	Q. Nothing else, no publications, no articles, no		7	Q. You would see the side surfaces if you look at	
8	treatises; right?		8	the front?	
9	A. No.		9	A. Well, I think we're getting into the -- maybe an	
10	Q. One follow-up question. You can refer to	11:20:00	10	issue of usability, user interaction. Do I think, when	11:23:52
11	figure 1 if you need to. So your opinion in the meaning		11	a person is holding that vial and that device in their	
12	of front plate, top side, that includes element 120,		12	hand, looking at it, I think what they see, what they	
13	sides, plural; right? That includes that part?		13	are perceiving, are the front surfaces. I don't think,	
14	A. No, it does not include 120.		14	in ordinary use, they're really seeing the sides. It's	
15	Q. So is your construction, this construction	11:20:59	15	not registering.	11:24:17
16	surfaces, plural, the front plate, is that incorrect?		16	Q. So if this is the device, right, and this is the	
17	A. The front plate, top side, would be, in my		17	strip here, generally, visible to a normal user is	
18	understanding, this area, this area, and this area. I'm		18	looking dead on. That's excluded, looking at an angle,	
19	pointing to what's labeled 110, 140 -- but not 1 -- 115,		19	seeing 120, and 110, and 115; right?	
20	and the unnumbered surface at the other end.	11:21:28	20	A. Right.	11:24:34
21	Q. Do you draw a distinction between looking at the		21	Q. So 15 degrees changes your construction?	
22	device at an angle or head on, in how you consider the		22	A. It may change what is visible, but it may not	
23	meaning of front plate, top side?		23	change so much what you're seeing, what you're looking	
24	A. Yes, straight on.		24	at.	
25	Q. Straight on.	11:22:05	25	Q. Visible versus looking at?	11:24:46
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1	A. Well, it really doesn't matter. It's what one		1	A. Yes. We're parsing terms, I think.	
2	would see looking at it straight on.		2	Q. That's claim construction. One second. So --	
3	Q. But not at an angle?		3	and you disagree with defendants' construction?	
4	A. No.		4	A. Well --	
5	Q. No. When you use surfaces, you mean 110, 115 is	11:22:21	5	Q. Because you're saying front plate, top side, not	11:25:27
6	encompassed in the meaning of the front plate, top side?		6	limited to the user-facing surface of the front plate;	
7	A. Yes. I would not construe 120 as being the top		7	right?	
8	side. And in this embodiment there's another edge		8	A. I think the term surface limits it.	
9	shown. There's another --		9	That's their, can be more than one.	
10	Q. Okay.	11:22:51	10	Q. Let's go to paragraph 8 of your declaration, sir.	11:26:04
11	A. There's another unnumbered edge there that I		11	Probably turn to page 7 of plaintiff's brief. That's	
12	will --		12	the same claim term. You got that?	
13	Q. That's essentially the corollary to 110?		13	A. Uh-huh.	
14	A. 110, on top side.		14	Q. Paragraph 8 consists of two sentences; am I	11:26:29
15	Q. Okay. Do you have plaintiff's brief in front of	11:23:03	15	right?	
16	you?		16	A. Uh-huh.	
17	A. Yes.		17	Q. The first one reads: In the concept of the	
18	Q. Look at the construction, second paragraph down:		18	patent and the file history, the term face plate means a	
19	Front plate, top side, means the surface of the front		19	portion of the front plate, top side, facing the user	
20	plate generally visible to the user during normal use?	11:23:16	20	during normal use. Although the face plate may include	11:26:40
21	A. Uh-huh.		21	openings through which slides protrude, nothing in the	
22	Q. So generally, is it too broad, then, front on		22	patent requires the face plate to, quote, house slide	
23	means front, heads up, which is at an angle? You said		23	bases, end quote. Did I read that right?	
24	at an angle --		24	A. Yes.	
25	A. I think the term generally makes it -- describes	11:23:25	25	Q. Okay. Do you have any other rationale or	11:26:56
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<p>1 explanation to add to that paragraph 8 for the meaning 2 of the claim term face plate?</p> <p>3 A. Yeah, because the face plate, because they have 4 numbered it individually, I think my interpretation of 5 it is that it refers only to that surface. It does not 6 refer to the openings.</p> <p>7 Q. Okay.</p> <p>8 A. The openings are, in my mind, a separate claim.</p> <p>9 Q. You mean the finger button holes; right?</p> <p>10 A. Yes.</p> <p>11 Q. Just to be clear, so in your paragraph 8 here you 12 make no specific references to patent style history; 13 right? No lines or pages or columns; correct?</p> <p>14 A. No.</p> <p>15 Q. And you don't cite specifically to any 16 publications or articles or treatises or scholarly 17 publications, do you?</p> <p>18 A. No.</p> <p>19 Q. Do you think the term face plate is unique, as 20 used in the patent?</p> <p>21 A. I think it's -- in my mind it's unique in this 22 particular application, because it differentiates that 23 area of the -- of 110, the front plate body.</p> <p>24 Q. Do you know the meaning of front -- I'm sorry, I 25 lost my place.</p>	<p>11:27:29</p> <p>11:27:51</p> <p>11:28:19</p> <p>11:28:38</p> <p>11:29:10</p>	<p>1 page 2 of 6 to 3 of 6. Actually, I'm wrong. It's the 2 bottom of page 2 of 6. See that?</p> <p>3 A. Yes.</p> <p>4 Q. If you want to get there, in the plaintiff's 5 brief it's also on page 8 of 15, if you want to 6 reference that.</p> <p>7 Okay. Paragraph 8 of your declaration 8 contains, looks like two sentences; right?</p> <p>9 A. Uh-huh.</p> <p>10 Q. First one reads: In the context of the patent 11 and file history, the term face plate means a portion of 12 the front plate, top side, facing the user -- beg your 13 pardon, we just did that. Bad question. That was 14 paragraph 8. We're on paragraph 9. I'm sorry. Start 15 over.</p> <p>16 A. We can go back to that, if you want.</p> <p>17 Q. It was long enough the first time.</p> <p>18 Let's go to paragraph 9. Paragraph 9 is at the 19 bottom of page 2. See that?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And that's two sentences. See that?</p> <p>22 A. Uh-huh.</p> <p>23 Q. The first sentences in paragraph 9 reads: In the 24 context of the patent, file history, the term slide gate 25 cavity means an area of the front plate bottom side</p>	<p>11:44:00</p> <p>11:44:19</p> <p>11:44:39</p> <p>11:44:51</p> <p>11:45:01</p>
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<p>1 Do you think the meaning of face plate is 2 clear, after considering the patent and file history?</p> <p>3 I'm sorry, that's a whole different question. I'll ask 4 you again. I'm sorry, bad question.</p> <p>5 Do you think the meaning of face plate is 6 clear, after considering the patent and file history?</p> <p>7 A. Yes, it's clear to me.</p> <p>8 MR. HOGAN: We've been -- how long have we 9 been going?</p> <p>10 THE VIDEOGRAPHER: Three hours.</p> <p>11 MR. HOGAN: Since our short break I meant, 12 I'm sorry.</p> <p>13 THE VIDEOGRAPHER: 9:51 we came back on.</p> <p>14 MR. HOGAN: Do you want to do a short break, 15 bio break?</p> <p>16 THE WITNESS: Sure.</p> <p>17 MR. HOGAN: Let's take a short break, 18 please.</p> <p>19 THE VIDEOGRAPHER: Off the record at 11:30.</p> <p>20 (A recess ensued.)</p> <p>21 THE VIDEOGRAPHER: We're back on the record 22 at 11:43.</p> <p>23 BY MR. HOGAN:</p> <p>24 Q. Okay. Looking at your declaration, sir, let's go 25 to paragraph 9, at the bottom of page -- goes from</p>	<p>11:29:31</p> <p>11:29:57</p> <p>11:30:12</p> <p>11:43:36</p> <p>11:43:45</p>	<p>1 across which the slide travels, period. There's a cite 2 there, it says see, e.g., figure 5, numeral 160. See 3 that?</p> <p>4 A. Uh-huh.</p> <p>5 Q. The next sentence reads: Contrary to defendants' 6 proposed construction, the slide gate cavity is not 7 limited to, quote, correlating with the face plate. See 8 that?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Figure 5, numeral 160.</p> <p>11 A. Yes.</p> <p>12 Q. You got that?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. So you cite figure 5, numeral 160 in 15 support of your opinion?</p> <p>16 A. Uh-huh.</p> <p>17 Q. Nothing else is specifically cited, no page, no 18 columns, no lines; right?</p> <p>19 A. Right.</p> <p>20 Q. You cite no publications, no treatises, no 21 scholarly articles; right?</p> <p>22 A. Correct.</p> <p>23 Q. The second sentence is essentially you 24 disagreeing, saying why you think defendants' 25 construction is wrong?</p>	<p>11:45:12</p> <p>11:45:27</p> <p>11:45:39</p> <p>11:45:45</p> <p>11:46:04</p>
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1	A. Right.	1	A. Well, technically speaking, the -- I think the
2	Q. This is all the rationale and explanation you	2	finger hole button also is part of that cavity because
3	have for the meaning of slide gate cavity; right? As	3	it provides limitation on how far the slide can travel
4	put forth in your declaration, that's it; right?	4	in the other direction. And the cavity, slide gate
5	A. Yes.	5	cavity, to me means a cavity in which the slide -- the
6	Q. Does the patent give an uncommon meaning to the	6	finger button can slide. Now I'm done.
7	claim term slide gate cavity?	7	Q. I think I asked you earlier this morning, sir,
8	A. Well, I think it's -- I don't think it's a very	8	your book is very popular, very well known, is used as a
9	good term for it, because the term cavity represents	9	basis for teaching undergraduates design, the precision
10	something that is enclosed, and -- and if that's the	10	of using markers to draw images. We talked about that
11	case, then it should also include the sides, because --	11	earlier, didn't we?
12	the slide gate cavity, in my feeling, is that space	12	A. Uh-huh.
13	that's created not only by the surface that the 160 is	13	Q. And one of the things you've espoused throughout
14	pointing to, but also component 150, which is -- I have	14	your career is detail and precision in drawings; right?
15	to be careful with my numbers -- slide gate, and there	15	A. Yes.
16	is actually -- my best reading of the numbers is that	16	Q. And 150, on figure 5, slide gate -- I'm sorry,
17	there is a slide gate type structure that surrounds each	17	160, slide gate cavity, does that point to the slide
18	of these areas, defined as slide gate cavity.	18	gate, 150?
19	Now, I also -- my interpretation also is	19	A. No.
20	that 130, the finger hole buttons, are part of that	20	Q. No, it doesn't. Does it point to the finger
21	cavity.	21	button hole, 130?
22	Q. Okay. And none of the explanation you just gave	22	A. No.
23	me is in your declaration, is it? It's not there, is	23	Q. Does it point to the buttons, finger buttons,
24	it, sir?	24	with a number, 250? It doesn't, does it?
25	A. Well, I think it is. I say --	25	A. It points to a surface. Yes, that calls it a
	Page 130		Page 132
1	Q. In the two sentences of that section of your	1	cavity.
2	declaration, where you just --	2	Q. I think you testified earlier, we were talking
3	MR. PEELER: Were you finished with your	3	about the face plate. You said that face plate is
4	answer?	4	raised to create space for the slide gate cavity.
5	THE WITNESS: No, I can continue.	5	Remember that?
6	BY MR. HOGAN:	6	A. Yes.
7	Q. You didn't answer my question. The explanation	7	Q. Wouldn't you agree, sir, the hollow area covering
8	you just gave me about your interpretation of slide gate	8	of the face plate is the slide gate cavity?
9	cavity is not contained in the two sentences provided in	9	A. It's part of it. I think without further
10	your declaration, is it?	10	definition, sliding of the finger buttons would not be
11	A. I think you asked me if that was a good, accurate	11	precise and controllable.
12	definition for that term.	12	Q. So looking at your declarations, also in
13	Q. I asked you if it was uncommon, and you gave me	13	plaintiff's brief, but we can look at your declaration,
14	some information, trying to explain why you thought it	14	you write: The term slide gate cavity means an area of
15	was a little bit unusual.	15	the front plate, bottom side, across which the slide
16	A. Confusing.	16	travels; right?
17	Q. So you think that term is confusing?	17	A. Yes.
18	A. Somewhat confusing.	18	Q. Is this a physical structure?
19	Q. So you wouldn't construe that term according to	19	A. Is the slide gate cavity a physical structure?
20	the plain, ordinary meaning, would you?	20	Yes.
21	A. Well, I can give that ordinary meaning and	21	Q. It's not a space bounded by a structure?
22	understanding by looking at what's around it.	22	A. It's pointing to a surface. Surface is a
23	Q. And you just told me that the slide gate cavity	23	structure.
24	includes the slide gate, 130 -- I'm sorry, slide gate,	24	Q. Have you ever had a cavity in your tooth?
25	150, and the slide gate cavity, 130; is that correct?	25	A. Yes.
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<p>1 Q. Is it enclosed or is it open?</p> <p>2 A. It's closed now.</p> <p>3 Q. By the dentist; right?</p> <p>4 A. You know, this term cavity and channel have both</p> <p>5 been, in my mind, not clearly defined by the patent. 11:53:01</p> <p>6 Q. So they're unclear. They're confusing?</p> <p>7 A. They're a little bit confusing.</p> <p>8 Q. They're --</p> <p>9 A. I think --</p> <p>10 Q. Right? 11:53:16</p> <p>11 A. But I'm content with my interpretation of them.</p> <p>12 I clearly see the area that is defining the movement</p> <p>13 of -- defining and controlling the movement of the</p> <p>14 finger buttons.</p> <p>15 Q. So a cavity is controlling the movement of the 11:53:32 finger buttons; is that your testimony?</p> <p>16 A. Partially controlling it.</p> <p>17 Q. Partially controlling it.</p> <p>18 A. It's also -- the back plate is very much a part</p> <p>19 of that, because without it the buttons would not be</p> <p>20 able to be retained in a cavity.</p> <p>21 MR. HOGAN: Do you have the definition of</p> <p>22 cavity you provided this morning, Charlie? I didn't get</p> <p>23 a hard copy. I have it on my phone, but it's hardly an</p> <p>24 exhibit. 11:54:05</p>	<p>1 The plaintiff's position in this case is</p> <p>2 plain, ordinary meaning for this term, is it not?</p> <p>3 MR. PEELER: Object to the characterization</p> <p>4 of the plaintiff's position.</p> <p>5 BY MR. HOGAN: 11:55:52</p> <p>6 Q. Take a look at the plaintiff's brief. It's right</p> <p>7 by your left hand, right here. Are you on page 8.</p> <p>8 A. Yes.</p> <p>9 Q. Plaintiff's construction, I'm reading down that</p> <p>10 column. It states, and correct me if I'm wrong, it 11:56:00 says: This term should be construed according to the</p> <p>11 ordinary and customary meaning. Did I read that right?</p> <p>12 A. Yes.</p> <p>13 Q. Then below that it says: Slide gate cavity means</p> <p>14 an area of the front plate, bottom side, across which 11:56:11 the slide travels.</p> <p>15 A. Yes.</p> <p>16 Q. The definition you provided us right now, and</p> <p>17 counsel gave us this morning before the deposition, the</p> <p>18 definition is a hollow place, a hollow hole, pocket; 11:56:22 right?</p> <p>19 A. Yes.</p> <p>20 Q. When did you first see the definition of cavity</p> <p>21 in this Merriam Webster's dictionary in terms of this</p> <p>22 case? 11:56:43</p>
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<p>1 MR. PEELER: I know I said that I did, but I</p> <p>2 don't know if I did that.</p> <p>3 MR. HOGAN: Do you have them, sir?</p> <p>4 THE WITNESS: I have them.</p> <p>5 BY MR. HOGAN: 11:54:17</p> <p>6 Q. Fantastic. Can I see them and take these pages</p> <p>7 as well? These pages are all from the same dictionary;</p> <p>8 right?</p> <p>9 A. No. One of them is from an online dictionary.</p> <p>10 Q. Okay. Let's see if I can figure those out. They 11:54:35 look the same to me, but they look like they're from the</p> <p>11 same book.</p> <p>12 A. No, I'm sorry, they're all from the Webster.</p> <p>13 Q. This is Webster's edition, copyrighted 1960, at</p> <p>14 the top. Are you with me? 11:54:57</p> <p>15 A. Yes.</p> <p>16 Q. Give me one second. In this exhibit you have</p> <p>17 here, page 133, and I'll mark this, highlighted is the</p> <p>18 word cavity. Did you highlight that?</p> <p>19 A. Uh-huh. 11:55:16</p> <p>20 Q. Definition says a hollow place, a hollow hole or</p> <p>21 pocket. And you relied on this in forming your opinion?</p> <p>22 A. Partially.</p> <p>23 Q. Partially. The dictionary definition -- let me</p> <p>24 back up. 11:55:36</p>	<p>1 A. I think when I was doing my declaration.</p> <p>2 Q. So prior to or on the day of March 13th?</p> <p>3 A. Yes.</p> <p>4 Q. So you had this definition of cavity in front of</p> <p>5 you, but your opinion is as stated here in your 11:56:59 declaration; correct?</p> <p>6 A. Yes.</p> <p>7 Q. And I think you've added to that the explanation,</p> <p>8 which is not in your declaration, that includes</p> <p>9 structure such as the slide gate and the finger button 11:57:14 hole; is that right?</p> <p>10 A. Uh-huh. And the back plate.</p> <p>11 Q. And the back plate.</p> <p>12 A. I'm not sure what you're asking me.</p> <p>13 Q. So you've added an explanation to your</p> <p>14 construction today? 11:57:24</p> <p>15 A. I'm not sure what you're asking me.</p> <p>16 Q. So you've added an explanation to your</p> <p>17 construction of slide gate cavity.</p> <p>18 MR. PEELER: Objection; mischaracterization.</p> <p>19 BY MR. HOGAN: 11:57:42</p> <p>20 Q. You stated today it includes the slide gate and</p> <p>21 the finger button hole, which is not in your</p> <p>22 declaration; correct?</p> <p>23 A. I told you that in context of your question as to</p> <p>24 whether or not the term cavity had unique meaning, and</p> <p>25 Page 135 11:57:51</p>
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1 explained to you that it had some ambiguity to it, but 2 that I was satisfied with the term cavity because of the 3 space that is created with this surface defined as 160, 4 with the slide gate, defined by 130, by the back plate, 5 310, and by the finger button holes, 130. Collectively 6 they form, in my mind, a cavity.	11:58:17	1 Q. So when you say "means," are you referring to the 2 means plus function construction of patent law? 3 A. I'm referring to the means of attaching one part 4 to another.	12:02:03
7 Q. You used space just now. Cavity or a space?		5 Q. Okay. Let's do this first. Look at column 7, 6 Line 64, over to Column 8, line 12. I'm not going to 7 ask you to read that, that's a pretty lengthy citation. 8 Are you with me on column 7?	
8 A. A cavity or space. I think a space can be a 9 cavity.		9 A. Uh-huh.	
10 MR. HOGAN: I'm going to make this exhibit 11 Kemnitzer K-8. 12 (Exhibit No. 8 was marked for 13 identification.) 14 BY MR. HOGAN: 15 Q. Moving on. Page 3 of 6 of your declaration, 16 paragraph 10. And so this claim term -- and it's 17 actually page 8 of 15 to 9 of 15, and to 10 of 15, also. 18 It's the plaintiff's brief for the construction 19 discussed by the plaintiff. Your declaration is page 3 20 to 4, Paragraphs 10 and 11. Okay? If that wasn't 21 clear, I apologize. Let's try it again. Ignore that. 22 Let's look at paragraph 10 of your 23 declaration. We're looking at page 8 to 9 of the 24 plaintiff's brief.	11:58:59	10 Q. Every U.S. patent has a caveat section like this, 11 before the claims begin; right? 12 A. Right. 13 Q. And every U.S. patentee wants a patent that can 14 be construed as broadly as possible; right?	12:02:24
25 A. Yes.	12:00:06	15 A. Yes. 16 Q. Every U.S. patent has one of these. That's been 17 my experience. Is that your experience as well? 18 A. Pretty much so. 19 Q. Okay. Do you -- this section -- this citation, 20 I'm sorry, column 7, column 8, this is a general caveat 21 saying there could be other -- it says other 22 embodiments, these are exemplary, et cetera; right? I'm 23 paraphrasing. 24 A. Yes, I understand.	12:02:42 12:03:03
		25 Q. Okay. No other structures for securing a back	12:03:18
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1 Q. Beg your pardon for the interruption, sir. 2 Paragraph 10 is a longer paragraph. It looks like 3 there's one, two, three, four, five sentences there. 4 I'm not going to read them all. It's your declaration. 5 I assume you know what the content of paragraph 10 is. 6 The first sentence states: In the context 7 of the patent and file history, the term plurality of 8 pinholes disposed in the front plate, bottom side, is 9 self-explanatory. The next sentence, next two 10 sentences, you provide some explanation of that; right?	12:00:49	1 plate to the front plate are stated in this section, are 2 they? 3 A. Not specifically. 4 Q. Not specifically. 5 Are you familiar with -- I think I asked you 6 this; I'll ask more clearly this time. Are you familiar 7 with means plus function under 35 USC, section 112, 8 paragraph 6? 9 A. No.	12:03:30
11 A. Yes.	12:01:06	10 Q. You never heard of that?	12:03:40
12 Q. The third sentence, one, two, three -- beg your 13 pardon, fourth sentence, it says: One means disclosed 14 in the patent to fix the front plate and back plate is 15 pinhole and protrusion snap fit; right?	12:01:24	11 A. No. 12 Q. So you have no understanding at all of that 13 statutory construction? 14 A. I answered that question. 15 Q. I'm sorry, I misspoke. You have no understanding 16 at all of that statutory section; right?	12:03:50
16 A. Uh-huh.	12:01:39	17 A. No. 18 Q. In your declaration, sir, is it your opinion that 19 the holes are structural or functional? 20 A. They're both.	12:04:31
21 A. Yes.	12:01:45	21 Q. They're both. Same with the protrusions, 22 structural and functional? 23 A. They're structural. I'm not so sure that they're 24 functional in terms of the use of the product. They	12:04:59
22 Q. Then there's a citation there to column 7, Line 23 64, column 8, line 12. We'll get to that. The last 24 sentence reads: A snap fit is one means for doing so.		25 hold the product together.	
25 A. Yes.		Page 139	Page 141

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<p>1 Q. Snap fitting. Structural or functional?</p> <p>2 A. Both.</p> <p>3 Q. Both.</p> <p>4 Are other means of connecting -- sorry. Are</p> <p>5 other ways of connecting the front plate to the back 12:05:17</p> <p>6 plate stated in the patent specifically?</p> <p>7 A. Certainly inasmuch as the paragraph that you have</p> <p>8 just referred to, and I believe there are some other</p> <p>9 spots. Without going through the patent, I think that</p> <p>10 there was some other mention of a embodiment of this, 12:05:40</p> <p>11 that this is one way of doing this, and I believe it</p> <p>12 refers to it in the notes.</p> <p>13 Q. Paragraph 10, I read to you several sentences</p> <p>14 from paragraph 10. We looked at the citation. There's 12:06:01</p> <p>15 no other citation, specific citation of the patent</p> <p>16 without history provided here, other than what's in</p> <p>17 paragraph 10; right?</p> <p>18 A. No, just a reference to myself as a designer,</p> <p>19 understanding that there are many ways to accomplish the</p> <p>20 connection between the front plate and the back plate 12:06:19</p> <p>21 beyond the one that is listed as a preferred embodiment.</p> <p>22 Q. I understand that's your testimony just now. No</p> <p>23 other references specifically to the patent or the file</p> <p>24 history by line, by page number, by paragraph were</p> <p>25 provided here; is that correct? 12:06:36</p>	<p>1 A. No.</p> <p>2 Q. And there's one orientation claimed in the</p> <p>3 patent; right?</p> <p>4 A. Yes.</p> <p>5 Q. The only thing claimed in Claim 1 is snap 12:08:53</p> <p>6 fitting; right?</p> <p>7 A. Is what fitting?</p> <p>8 Q. Snap fitting.</p> <p>9 A. Snap fitting, yes.</p> <p>10 Q. I think we can move -- 12:09:02</p> <p>11 A. But I think it might have also said that there</p> <p>12 are other ways of doing it. I'm fairly certain that I</p> <p>13 saw that somewhere.</p> <p>14 Q. They're not cited in your declaration in</p> <p>15 paragraph 10. If they occur to you today, before we 12:09:18</p> <p>16 break, before we finish, then please let me know. But I</p> <p>17 don't see any in the patent as I look at it, and I don't</p> <p>18 see any in your declaration either. So if we missed it,</p> <p>19 I'd be happy to hear it. But being that -- you said</p> <p>20 there are other ways you could put these two things 12:09:34</p> <p>21 together, but they're not claimed; right?</p> <p>22 A. Right.</p> <p>23 Q. They're not claimed as snap fitting; right?</p> <p>24 A. Right. And snap fitting can be done in other</p> <p>25 ways. 12:09:47</p>
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<p>1 A. No.</p> <p>2 Q. No publications, no scholarly articles, no</p> <p>3 treatises?</p> <p>4 A. No.</p> <p>5 Q. Not even a Kemnitzer publication to explicate 12:06:43</p> <p>6 your understanding of design; right? Nothing like that?</p> <p>7 A. No.</p> <p>8 Q. Do you know the meaning of plurality of pinholes</p> <p>9 exposed in the front plate, bottom side? It's clear,</p> <p>10 since they're in the patent; right? Here you say 12:07:21</p> <p>11 they're self-explanatory.</p> <p>12 A. I think it's self-explanatory.</p> <p>13 Q. No uncommon usage in that phrase?</p> <p>14 A. I don't think so.</p> <p>15 Q. Do you have any other opinions as to the meaning 12:08:02</p> <p>16 of this claim, other than what's provided here in</p> <p>17 paragraph 10 of your declaration?</p> <p>18 A. Well, I think in terms of a designer of ordinary</p> <p>19 skill would see that it really makes no functional</p> <p>20 difference whether the pin protrusions are on the top</p> <p>21 side or the bottom side, and I think that there are many</p> <p>22 other ways of attaching the front side to the bottom</p> <p>23 side that are in common practice.</p> <p>24 Q. But no other ways are described in the patent,</p> <p>25 are they? 12:08:46</p>	<p>1 Q. That's your opinion; right?</p> <p>2 A. Well, it's a very informed opinion.</p> <p>3 Q. I understand.</p> <p>4 Let's look at paragraph 11, paragraph 11 of</p> <p>5 your declaration. This is directed to -- well, it's 12:09:55</p> <p>6 your declaration. You wrote it. I assume you're</p> <p>7 familiar with it. Paragraph 11 is directed to the term</p> <p>8 back plate having a plurality of protrusions disposed on</p> <p>9 the back plate, top side; right?</p> <p>10 A. Uh-huh. 12:10:20</p> <p>11 Q. So the first sentence of paragraph 11 states: In</p> <p>12 the context of patent and file history, the term back</p> <p>13 plate having a plurality of protrusions disposed on the</p> <p>14 back plate, top side, is likewise self-explanatory.</p> <p>15 A. Yes. 12:10:31</p> <p>16 Q. Is your testimony for the plurality of pinholes,</p> <p>17 I think that applies to the back plate protrusions;</p> <p>18 right?</p> <p>19 A. Yes.</p> <p>20 Q. Self-evident from the patent? 12:10:40</p> <p>21 A. Yes.</p> <p>22 Q. Plain, ordinary meaning of that claim term?</p> <p>23 A. Functionally speaking, there's no difference</p> <p>24 whether the pins are on the top or the bottom.</p> <p>25 Q. And the basis of your opinion is that plurality 12:10:54</p>
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1 of protrusions is the same as the plurality of the 2 pinholes? 3 A. Same. 4 Q. Same rationale; right? They're put together and 5 are designed; right? 6 A. Yes. 7 Q. And again, we can belabor this or we can go 8 through it quickly. So second to last paragraph, or 9 starting sentence in paragraph 11, it's the top of 10 page 4: One of ordinary skill in the art will 11 appreciate that there are multiple other means available 12 to secure the front plate and back plate together. 13 A. Yes. 14 Q. And you say, just like from paragraph 11, a snap 15 fit is one means for doing so. As we talked about a 16 second ago, the only means disclosed and claimed is a 17 snap fitting, and the protrusions of the back side of 18 the patent. That's all that's described; right? 19 A. Yes. 20 Q. We're on page 4 of 6 in your report. Do you have 21 that? 22 A. Yes. 23 Q. You might want to have handy page 10 of 24 plaintiff's brief, in case you need to refer to it. 25 Page 10 of 15.	12:11:06	1 be comprised of, does it? 2 A. It says is comprised of. 3 Q. Right. The next sentence in your report says: 4 An embodiment of the slide base is depicted at figure 5, 5 numeral 210. See that in your report? 6 A. Uh-huh. 7 Q. Let's go to figure 5, 210. You got that figure 5 8 in the patent? 9 A. Yes. 10 Q. That's the bottom view of the one embodiment of 11 the device; correct? 12 A. Uh-huh, yes. 13 Q. And 210 points to what? 14 A. The bottom of the finger button. 15 Q. The slide base; right? 16 A. The bottom of the slide base, yes. 17 Q. And in fact, in the patent we just read, 210 is 18 the slide base; right? 19 A. Yes. 20 Q. If you look at figure 1 of the patent. 21 A. Got it. 22 Q. See 210 there? 23 A. Yes. 24 Q. Points to the -- it's the slide base again. 210 25 is the same number in both figures; right?	12:14:27
	12:11:34	Page 146	Page 148
1 Okay. You prepared paragraph 12. I assume 2 you read what's there. The first sentence reads: In 3 the concept of the patent and file history, the term 4 slide base means the base of the slide. See that? 5 A. Uh-huh.	12:12:53	1 A. Yes. 2 Q. See where it points? 3 A. Yes. 4 Q. Where does it point to? 5 A. Top surface.	12:15:43
6 Q. You say -- the next sentence reads: The patent 7 describes slide assemblies comprised of several items, 8 one of those being a slide base, column 7, line 41. 9 So do you have paragraph 7, line 41? 10 A. Paragraph 7, line 64?	12:13:13	6 Q. Top surface. Okay. 7 And then the last part of your 8 declaration -- I know I'm jumping back and forth, beg 9 your pardon. So we're back at your declaration, 10 paragraph 12, the last sentence. I'll read that to you.	12:15:13
11 Q. Line 41 is what I'm looking at. Paragraph 12 in 12 your declaration.		11 It says: The patent claims recite that the slide 12 base -- the slide assemblies are curved, but the 13 definition of slide base, in and of itself, does not 14 include this limitation. See column 8, lines 24-27. 15 See that?	12:16:01
13 A. Yeah.		16 A. Uh-huh.	
14 Q. I think you're in 13.		17 Q. Let's go to column 8, line 24-27. That's part of 18 claim 1, is it not?	12:16:19
15 A. Oh, sorry.	12:13:43	19 A. Yes.	
16 Q. No problem. You got that?		20 Q. That reads: Wherein the front plate, the 21 plurality of slide assemblies, the back plate, and the 22 dosage indicator are curved and collectively form an 23 assurance dosage strip for attachment to a medicine 24 vial. It says curved; right? The device is curved.	12:16:30
17 A. Yes.		25 A. Yes.	12:16:52
18 Q. Okay. Do you have column 7, line 41?			
19 A. Yes.			
20 Q. I'll read it to you. It says: Each slide 21 assembly, 200, is comprised of a slide base, 210, a 22 slide base lock, 220, et cetera. That's what it says; 23 right?	12:13:52		
24 A. Yes.			
25 Q. It does not say a slide base assembly, 200, may	12:14:04		

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1	Q. So you say in your declaration the patent claim	1	A. No, not in that particular sentence.
2	assemblies are curved, but you say they don't need to be	2	Q. Okay. In the context of the 358 patent, does the
3	so. You're looking at figure 1. Do you have figure 1	3	patent give the term slide base an uncommon meaning?
4	there?	4	A. Well, base can be defined as the bottom surface,
5	A. Yes.	5	or the base could be defined as the lower portion of an
6	Q. 210. They look curved, don't they?	6	object, and so I don't think that it is an unusual
7	A. Yes, they do.	7	construction of the definition.
8	Q. Look at figure 5, please, sir.	8	Q. So the plain, ordinary meaning of the term
9	A. Yes.	9	applies; right?
10	Q. 210. They look curved, don't they?	10	A. I think so.
11	A. Yes, they do.	11	Q. Do you think the meaning of slide base is clear
12	Q. Is there any figure in the patent that shows the	12	after you considered the patent and the file history?
13	slide bases that are not curved?	13	A. Yes.
14	A. No. And I stand corrected. My last statement	14	Q. Let's look at paragraph 13 of your declaration.
15	was clearly in error.	15	Back to the bottom of page 4 of 6 of your declaration;
16	Q. So that part of defendant's construction, not so	16	right, sir?
17	bad; right? Curved structure supports the finger	17	A. Yes.
18	button. At least the structure is curved. We can agree	18	Q. Okay. Also, this claim term -- okay. The claim
19	on that; right?	19	term is described in that paragraph as slide base
20	A. Yes. So technically speaking, it doesn't say the	20	channel. Page 11 of the plaintiff's brief, it's also
21	slide base, it says the slide assemblies. But I'm not	21	discussed this, if you want to flip there for quick
22	about to argue that the base is not curved.	22	reference. You might look at that.
23	Q. Okay. I think you said a minute ago, we were	23	A. Sorry, paragraph 11?
24	looking at figure 5, the slide base, the bottom view.	24	Q. I'm sorry, page 11 of 15. Do you have all that?
25	It's the bottom of the slide base; right?	25	A. Uh-huh.
	Page 150		Page 152
1	A. Yes.	1	Q. You wrote paragraph 13. I assume you know what
2	Q. And so the bottom of the slide base supports the	2	is contained therein -- are you all right?
3	slide; right?	3	A. They have modesty panels on these two, and
4	A. Everything supports the slide that I mentioned	4	there's just enough room to stick my legs in between
5	before. The bottom plate supports it, the face plate	5	them. Being the modest person that I am, I'm running
6	surface supports it, and the slide base supports it.	6	into them a lot.
7	Without all of those elements, it doesn't work. They	7	Q. We'll tell the hotel, lodge a claim after we're
8	all support it. And finger holes do as well, because	8	done here.
9	they limit the movement of the button.	9	Okay, back to the patent. The first sentence of
10	Q. What you just told me, that's not in your	10	paragraph 13 reads: In the context of the patent and
11	declaration, is it?	11	file history, the term slide base channel means the
12	A. Where?	12	channel area through which the slide base travels.
13	Q. I asked you if -- we looked at the bottom of the	13	That's stated in your declaration; right?
14	slide base, 210. I think you said earlier it supports	14	A. That is.
15	the slide. You said no, everything else does, too, the	15	Q. And I understand, as of this morning, plaintiff
16	base, the front plate, the finger hole. But that	16	is taking a different construction; correct?
17	explanation you just gave me, that's not in your	17	A. Yes.
18	declaration, is it?	18	Q. And that construction is a recessed area on the
19	A. No.	19	top surface of the slide base.
20	Q. It's not there?	20	A. Correct.
21	A. They're not there, nor are the protrusions,	21	Q. Is that your understanding as well?
22	plurality of protrusions. That doesn't mean that I	22	A. Yes.
23	don't recognize that they exist.	23	Q. We got that via e-mail from counsel for plaintiff
24	Q. But they're not in your declaration, clearly;	24	this morning, about 7:30 or so.
25	correct?	25	A. Yes.
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<p>1 Q. So when did you arrive at this new construction?</p> <p>2 A. Well, I've been conflicted about this</p> <p>3 construction for some time. Largely because of the use</p> <p>4 of cavity in this application, and use of cavity in the</p> <p>5 term slide gate cavity, and both have a direct</p> <p>6 relationship to the finger buttons. And so in this</p> <p>7 declaration, paragraph 13, I misconstrued the term</p> <p>8 finger button channel with slide gate.</p> <p>9 Q. With slide base channel?</p> <p>10 A. The slide base channel, yes. So it's wrong. And</p> <p>11 I understand that 240, this slide base channel, is a</p> <p>12 recessed area on the top surface of the base, slide by</p> <p>13 the base.</p> <p>14 Q. And you're looking at figure 1; right?</p> <p>15 A. Figure 1, number 2 -- 230 is the one that points</p> <p>16 to this.</p> <p>17 Q. Slide base channel; right?</p> <p>18 A. And 240 points to the surface of the channel.</p> <p>19 Q. Okay.</p> <p>20 A. Part of my confusion was that it didn't look like</p> <p>21 a channel, by my understanding of the term channel. But</p> <p>22 I got -- was able to magnify -- since the writing of the</p> <p>23 declaration, I was able to magnify the patent to the</p> <p>24 point where I could see some detail in this drawing that</p> <p>25 does graphically indicate a channel, albeit a very</p>	<p>1 channel?</p> <p>2 A. I think so.</p> <p>3 Q. Okay. You needed the magnified version to</p> <p>4 actually get there, though; right?</p> <p>5 A. Well, you can see from even your copy, that the</p> <p>6 line quality is not really strong. You can see in this</p> <p>7 front edge of that recessed channel, there is a double</p> <p>8 line that's back from the edge of the base. I could see</p> <p>9 that. So that's first clue. And then enlarging it</p> <p>10 verified that for me.</p> <p>11 Q. So this clarification or correction of the</p> <p>12 construction occurred by you looking at a blown-up copy</p> <p>13 of the patent, not by considering any other material; is</p> <p>14 that right?</p> <p>15 A. No. The text of the patent had a lot to do with</p> <p>16 it.</p> <p>17 Q. Okay. Just --</p> <p>18 A. And I was having some conflict between what I was</p> <p>19 seeing here, what I was reading in the patent, and the</p> <p>20 fact that channel and cavity were being used kind of</p> <p>21 interposably. I think it's confusing. If I were</p> <p>22 writing the patent, I would have used two separate</p> <p>23 terms.</p> <p>24 Q. Do you think the meaning of this claim term --</p> <p>25 A. That's the whistle telling all the people working</p>
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<p>1 shallow channel. But there is a dimensional drop on</p> <p>2 that surface.</p> <p>3 Q. Okay. So was that based on -- I assume you say</p> <p>4 magnify like a blow-up copy, like a magnifying glass?</p> <p>5 A. I blew up the digital file.</p> <p>6 Q. Like 150 times, just made it bigger?</p> <p>7 A. Yes.</p> <p>8 Q. When did you do that?</p> <p>9 A. It was after the writing of the declaration.</p> <p>10 Q. Was it recently, like in the last week?</p> <p>11 A. It was in the last -- well, it's been two weeks</p> <p>12 since the declaration. It's been about the last week,</p> <p>13 yeah.</p> <p>14 Q. I'm going to ask you a question. I don't want to</p> <p>15 know exactly what you said or exactly what he said, but</p> <p>16 did you communicate this to counsel, your change of</p> <p>17 opinion on this claim term?</p> <p>18 A. Yes.</p> <p>19 Q. Do you know about when you did that?</p> <p>20 A. I think we've been discussing it. Initially</p> <p>21 discussed it a few days ago, and reached an agreement</p> <p>22 yesterday evening.</p> <p>23 Q. So without magnifying the drawing, like with a</p> <p>24 magnifying glass, would a person of ordinary skill in</p> <p>25 the art understand the meaning of the claim term</p>	<p>1 at the train factory they can go home -- I guess it's</p> <p>2 lunch now. Sorry.</p> <p>3 Q. Do you think that the meaning of slide base</p> <p>4 channel is clear, after considering the patent?</p> <p>5 A. Yes, it's clear to me.</p> <p>6 Q. And slide base channel has its plain, ordinary</p> <p>7 meaning here; right?</p> <p>8 A. Yes. I believe in the joint --</p> <p>9 Q. I didn't bring the joint statement.</p> <p>10 A. Okay. I believe in that, there was some</p> <p>11 definitions that were there, and that is when I went</p> <p>12 back to my definitions, to see if they were compatible,</p> <p>13 because I think that had a definition for channel, and I</p> <p>14 wanted to compare that with hollow, and my comparison</p> <p>15 led me to believe that they're really the same thing.</p> <p>16 Q. Can I see Exhibit 7?</p> <p>17 I see in your joint claim of construction</p> <p>18 statement, my recollection is the defendants provided a</p> <p>19 definition of channel. Is there a page missing from</p> <p>20 this?</p> <p>21 A. There's three.</p> <p>22 Q. Three pages. Okay, sorry. Never mind.</p> <p>23 So it's clear to you, as an expert in this</p> <p>24 case, the meaning of slide base channel, from looking at</p> <p>25 the magnified image --</p>
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1	A. Yes.		1	figure 5 -- figure 1, essentially; right?	
2	Q. -- figure 1, do you think it would be clear to a		2	A. Yeah, figure 1, and also the -- yeah, the slide	
3	person of ordinary skill in the art, reading the patent,		3	base channel definition, 230.	
4	knowing the meaning of the word slide base channel?		4	Q. Would you agree with me that it seems, from your	12:35:35
5	A. I think so.	12:31:35	5	testimony today and the construction, it's your position	
6	Q. Okay.		6	that the ordinary and customary meaning of the word	
7	A. Eventually.		7	channel is a recessed area; is that right?	
8	Q. If they look at the figure?		8	A. Yes.	
9	A. If they look at it long enough and hard enough,		9	Q. And you're saying a U-shaped channel as different	
10	and compare it to the slide gate cavity, they'll be able	12:31:50	10	from a V-shaped channel?	12:36:07
11	to -- I was able to figure out, finally, the difference		11	A. It doesn't show a V-shaped channel. It shows a	
12	between them.		12	channel that's flat from side to side.	
13	Q. So plaintiff's construction is a recessed area on		13	Q. And you're interpreting groove as a V-shaped	
14	the top surface of the slide base; right? I didn't		14	channel; that's your consideration?	
15	bring the e-mail I have it in, but I have it written	12:32:13	15	A. Yes.	12:36:23
16	down on my copy of the brief.		16	Q. Did you rely on a dictionary for that?	
17	A. Yes.		17	A. No, just experience.	
18	Q. The defendant's construction is a groove in the		18	Q. That's your opinion?	
19	user facing portion of the slide base. Are those		19	A. Yes.	
20	constructions all that different?	12:32:24	20	Q. And you're not going to cite a dictionary or a	12:36:28
21	A. Well, a groove to me indicates something like if		21	treatise or a publication saying a groove is a narrow	
22	I got my pen-knife out and I scraped it along here, it		22	V-shaped channel?	
23	will create a groove, more of a very narrow indentation		23	A. No. In education we try to be very clear and	
24	in the surface. And I see this more as a channel. If		24	specific about terms we use when we're describing our	
25	you think of, like an irrigation channel shape, more	12:32:45	25	designs, and we drill that into students. And it's	12:36:44
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1	like I'm describing a broad U shape.		1	important also, as a professional, to try to be as	
2	Q. A flat U versus a V?		2	accurate -- descriptive and accurate as we can be, so	
3	A. Yeah. So that would be my interpretation.		3	there's no misunderstanding.	
4	Q. Would you agree -- I'm sorry, go ahead.		4	Q. Do you think a person of ordinary skill in the	
5	A. That would be my interpretation of those two	12:33:01	5	art -- let's take your first cut at that -- little to no	12:37:03
6	terms, and --		6	education and experience in taking pills, do you think	
7	Q. The terms being recess and groove; right?		7	their term would be a narrow groove-shaped channel, or	
8	A. Between a recessed channel and a groove. My		8	could be just like a recessed area?	
9	preference would be a recessed channel is more		9	A. I think, if you put a drawing of a rectangle in	
10	descriptive accurately, from my point of view.	12:33:17	10	front of somebody and say draw a channel in this from	12:37:24
11	Q. Would you agree with me that those definitions		11	side view, and then give another sheet, now draw a	
12	are pretty close? They're sort of shades of the same		12	groove, I think you would get different things. My	
13	color, aren't they?		13	feeling is that you would get something close to what	
14	MR. PEELER: Objection; asked and answered.		14	I'm describing, that a groove might just be a irregular	
15	THE WITNESS: I see a difference in them.	12:33:27	15	kind of shape.	12:37:49
16	BY MR. HOGAN:		16	Q. Some difference. Okay.	
17	Q. Okay. One is V-shaped, one is U-shaped?		17	Let's turn to paragraph 14 of your declaration.	
18	A. Yes.		18	It's on page 5 of 6. You might also talk about the	
19	Q. So just to back up, to make sure we're all the		19	plaintiff's claim construction on page 12 of 15. Do you	
20	same wavelength here, paragraph 13 in your declaration,	12:34:05	20	have that handy, in case you need it?	12:38:10
21	the citation to column 7, Line 64, column 8, line 12,		21	A. Yes.	
22	are you still relying on that for the construction? I		22	Q. Does the change of your construction of slide	
23	would say no.		23	base channel affect your construction of slide base	
24	A. Yeah, I would say no.		24	channel surface having a distinctive coloring?	
25	Q. Okay. So you're relying on the dictionary of --	12:34:21	25	A. No.	12:38:54
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<p>1 Q. No. Why not?</p> <p>2 A. Because I was wrong in that previous</p> <p>3 interpretation, and I believe that I'm correct.</p> <p>4 Q. 13 was wrong, as you testified a minute ago. 14</p> <p>5 is okay, though; right?</p> <p>6 A. Yes.</p> <p>7 Q. And 14, I'm going to read the first sentence of</p> <p>8 14: In the context of the patent and file history, the</p> <p>9 term slide base channel surface having distinctive</p> <p>10 coloring means the surface of the slide base channel</p> <p>11 that has distinctive coloring.</p> <p>12 A. Yes.</p> <p>13 Q. I read that correctly, if inartfully?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. I asked you about whether the change of</p> <p>16 your position on slide base channel affected this,</p> <p>17 because this construction incorporates slide base</p> <p>18 channel in it.</p> <p>19 A. Yes.</p> <p>20 Q. Can you explain that to me?</p> <p>21 A. I think I was -- I don't know that I have a good</p> <p>22 explanation of that, other than I just got confused</p> <p>23 between slide gate cavity and slide gate channel in the</p> <p>24 context of the movement of the...</p> <p>25 Q. Okay.</p>	<p>1 Q. Why?</p> <p>2 A. I think I answered that.</p> <p>3 Q. You told me about the mistake and confusion with</p> <p>4 cavity and channel; I got that. But given that it's</p> <p>5 slide base channel is the underlying foundation of this</p> <p>6 construction and that has changed this morning, so your</p> <p>7 testimony has no impact on the meaning of this claim</p> <p>8 term; is that right?</p> <p>9 A. Yeah. I just confused slide gate channel with</p> <p>10 slide gate cavity. Simple as that. Indefensible, but</p> <p>11 that's what happened.</p> <p>12 Q. Things happen all the time. No problem.</p> <p>13 A. In a perfect world, nothing is perfect.</p> <p>14 Q. So do you think there's any unique or uncommon</p> <p>15 meaning to this claim term?</p> <p>16 A. No. I think it's clearly defined by the reading</p> <p>17 of the text in conjunction with viewing of the drawings.</p> <p>18 It's not -- I don't like the term. I think the term in</p> <p>19 itself is somewhat confusing.</p> <p>20 As I said before, I probably would have made</p> <p>21 an effort, were I involved in the -- defining these</p> <p>22 terms, to give a little bit more clarity and</p> <p>23 differentiation between some of the terms.</p> <p>24 Q. Why is it significant that the specific coloring</p> <p>25 be on the slide base channel? Sorry, slide base channel</p>
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<p>1 A. It was a mistake.</p> <p>2 Q. I guess I'm trying -- I'm not trying to beat you</p> <p>3 up on slide base channel only. It's talking about slide</p> <p>4 base channel surface having a distinctive coloring.</p> <p>5 A. Yes.</p> <p>6 Q. And I guess my question is, based on the change</p> <p>7 of interpretation of slide base channel, what impact on</p> <p>8 slide base channel surface has a distinctive coloring?</p> <p>9 MR. PEELER: Objection.</p> <p>10 THE WITNESS: Recognizing my error in the</p> <p>11 previous section didn't change my mind about this. I</p> <p>12 was wrong with that one, I was right with this one.</p> <p>13 BY MR. HOGAN:</p> <p>14 Q. Okay. So even though -- I'm looking at the</p> <p>15 brief, and it's actually in your -- I'll read it from</p> <p>16 your declaration. First sentence begins: The term</p> <p>17 slide base channel surface having distinctive coloring</p> <p>18 means the surface of the slide base channel that has</p> <p>19 distinctive coloring.</p> <p>20 Slide base channel is in that construction, but</p> <p>21 it's your position that despite the change I've been</p> <p>22 getting on slide base channel, your construction and</p> <p>23 opinion on the meaning of slide base channel having</p> <p>24 distinctive coloring is unaffected; is that right?</p> <p>25 A. Yes.</p>	<p>1 surface? I'll ask the question again. I'll reask it.</p> <p>2 Why is it significant that distinctive</p> <p>3 coloring be on the slide base channel surface?</p> <p>4 A. I think at some point in the text of the patent,</p> <p>5 it says that the slide base surface may be colored. So</p> <p>6 in my mind, that means that there could be other means</p> <p>7 of identifying through color. The color could be on the</p> <p>8 body of the device. It could also be a different color</p> <p>9 on either side of the finger button. So I interpreted</p> <p>10 that reading to mean that the color indication doesn't</p> <p>11 have to be on that surface.</p> <p>12 Q. Okay. That's not what I asked you, though.</p> <p>13 A. Although --</p> <p>14 Q. What's the significance of the color?</p> <p>15 A. What's what?</p> <p>16 Q. The significance of the color. Why is the color</p> <p>17 there? What function does the color serve?</p> <p>18 A. Indicates dosage taken.</p> <p>19 Q. That's right. The patent describes red or green</p> <p>20 for not taken or taken; right?</p> <p>21 A. Uh-huh.</p> <p>22 Q. So you just said that the colors could be on the</p> <p>23 back plate. Did I hear you right?</p> <p>24 A. Colors could be on the face plate. The colors</p> <p>25 could also be on either side of the finger button.</p>
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1	There are other ways of doing it. There's also just the	1	Q. It says: I offer this declaration in connection
2	position of the switch, which is an indicator, too, of	2	with the plaintiff's opening brief on claim
3	the button. And particularly instructive for blind	3	construction. This declaration does not include all of
4	people, because they can't see the color.	4	my opinions -- I'm sorry. This declaration does not
5	Q. Right. I understand printed with Braille on some	5	include all opinions I may offer in this lawsuit. Did I
6	of the color. Okay?	6	read that correctly?
7	A. Yes.	7	A. Yes.
8	Q. All of the figures show the slide based channel	8	Q. What does that last sentence mean?
9	surface with distinctive coloring on the slide base,	9	MR. PEELER: Without disclosing what -- the
10	don't they?	10	substance of topics you and I have discussed beyond
11	A. Yes.	11	claim construction.
12	Q. There's no figures, there's no description in the	12	BY MR. HOGAN:
13	patent of the coloring being on the face plate, is	13	Q. I don't want to know what you told your lawyer,
14	there?	14	he told you. I want to know what that means to you.
15	A. Other than the reference that I referred to that	15	A. It means that I will, if asked, write a report
16	said they may be colored. It doesn't mean --	16	stating my reasons for believing that there is
17	Q. The slide base channel surface may be colored?	17	infringement.
18	A. May be colored.	18	Q. Patent infringement?
19	Q. And actually, I meant ones they are colored;	19	A. Patent infringement.
20	right? They're red and green.	20	Q. Trade dress infringement?
21	A. Later in the patent it describes as being	21	MR. PEELER: Don't. I mean, just don't --
22	colored.	22	if asked.
23	Q. So you're talking about the defendants' claims	23	THE WITNESS: If asked.
24	talk about a tactile or nontactile indicator on the face	24	BY MR. HOGAN:
25	plate; right?	25	Q. Trademark infringement, if asked?
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1	A. Uh-huh.	1	A. If asked.
2	Q. Or they can be Braille on the face plate; right?	2	Q. Do you know anything about copyrights?
3	A. Yes.	3	A. Yes.
4	Q. That's not distinctive coloring. The distinctive	4	Q. Copyright infringement report, if asked?
5	coloring has got to be on the slide base channel	5	A. Yes.
6	surface; right? That's what's shown and what's claimed;	6	Q. You haven't prepared those at this point, have
7	right?	7	you?
8	A. Yes.	8	A. No.
9	MR. HOGAN: I'm getting close to the end.	9	Q. Do you have any other opinions on the meaning of
10	Can we take a short break and I'll collect my notes?	10	any of the claim terms in the 358 patent, apart from
11	I'll probably have some more questions, so we're not	11	what is in your declaration that we talked about today?
12	done yet. Can I collect my notes?	12	A. No, not at this time.
13	MR. PEELER: Sure.	13	Q. And I include in that the slide base channel
14	MR. HOGAN: Five-ish? Five, ten?	14	update today.
15	THE VIDEOGRAPHER: Off the record, 12:48.	15	A. Yes.
16	(A recess ensued.)	16	Q. Okay. Any other opinions, you said no, they're
17	THE VIDEOGRAPHER: Back on the record at	17	all in the report; right? All in the declaration. I'm
18	12:59.	18	sorry, strike that. Let me ask that again. It was not
19	BY MR. HOGAN:	19	a clear question.
20	Q. We were talking about your declaration before the	20	All your opinions on the meaning of the claim
21	break. Remember that, sir?	21	terms, they're in the declaration as written, with the
22	A. Yes.	22	addition from this morning; right?
23	Q. Paragraph 15 of your declaration, it's on page 5	23	A. Yes.
24	of 6.	24	Q. Do you have any other opinions on any of the
25	A. Yes.	25	claim terms, whether in dispute or not, in the 358
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1	patent, that are not in your report, other than we	1	A. Uh-huh.
2	talked about today?	2	Q. Did that include the generally visible sides of
3	A. Not --	3	the front plate?
4	MR. PEELER: Let me object that that's	4	A. There is -- well, the front plate is -- let me
5	outside the scope, but you can answer it.	5	find my -- so front plate is 110, the structure of this.
6	THE WITNESS: Yeah, I reviewed the -- my	6	And the top side, I think in the patent it refers to it
7	report, my declaration, and I'm satisfied with all of	7	having a top side, a left side, and a right side. And
8	the definitions as amended today.	8	this is the front plate, and there's a top and there's a
9	BY MR. HOGAN:	9	bottom, and so the bottom would be what we referred to
10	Q. Okay. And you have no other opinions of any	10	as the base before, in terms of finger buttons. So
11	other claim terms as you sit here today; is that right?	11	everything that we see here is on the top side, not the
12	A. No, I don't have any other opinions today.	12	bottom side. And I think there was a -- sorry. So all
13	Q. Is there anything else you want to state about	13	of the sides are missing a part of the top side.
14	your declaration or your interpretation of the claim	14	And in normal use, I think there is the term
15	terms that you've not already said today?	15	called user facing. Well, this device is attached to a
16	MR. PEELER: Objection.	16	prescription vial. And if you've used a prescription
17	THE WITNESS: I don't have any other	17	vial, and if you haven't, God bless you, you're very
18	questions for you to ask me.	18	lucky, but you know that the instructions and the words
19	BY MR. HOGAN:	19	are wrapped around the vial. They're difficult to read,
20	Q. You want to go home, I understand.	20	because you have to hold the vial and turn it as you're
21	Is there any other opinions you have	21	reading. And for somebody with impaired vision or
22	about -- sorry. Try that again.	22	limited dexterity -- all those things that you need
23	Is there any other opinions you have about	23	medicine for does that -- it's very difficult. But in
24	defendant's construction, not in your report or talked	24	the course of user interaction, they are turning the
25	about it today?	25	vial, and so they are going to see all of the surfaces
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1	A. No, I've expressed my opinions.	1	of that top plate.
2	Q. Apart from paragraph 4 in your report, which	2	MR. PEELER: Those are the questions I have.
3	references patent file history, and there's Exhibit 1 we	3	MR. HOGAN: I'm going to follow that up with
4	looked at today, the list of things you reviewed --	4	a few questions.
5	A. Yes.	5	
6	Q. -- and we also got the definition this morning	6	FURTHER EXAMINATION
7	regarding cavity and slide base channel.	7	BY MR. HOGAN:
8	A. Uh-huh.	8	Q. You said 110 is the front plate. 110 is the
9	Q. Apart from those materials and the information	9	front plate body, 100 is the front plate.
10	identified in Exhibit 1, is there anything else that you	10	A. Yeah. But 110, the body contains all of the
11	have relied upon or considered in forming the opinions	11	other components.
12	as stated in your affidavit -- sorry, declaration?	12	Q. That's your testimony, front plate body, 110,
13	A. No. Those are all from material, articles that	13	contains all the other components, 120, 140, 130, 180;
14	I've considered.	14	is that right?
15	MR. HOGAN: I think right now, at this	15	A. In terms of this definition, front plate, top
16	moment, we have no more further questions for	16	side, I think this is the front plate on the 100. The
17	Mr. Kemnitzer. We reserve the right, if he puts another	17	top side is everything we see here. The bottom side is
18	report in on this case, to depose him again. But for	18	everything we don't see here, on the other side. All
19	right now, I'm done.	19	right?
20	MR. PEELER: I've just got one follow-up.	20	Q. Okay. And the explanation you gave opposing
21		21	counsel, Mr. Peeler, to his question about the meaning
22	EXAMINATION	22	of front plate, top side, none of that explanation is in
23	BY MR. PEELER:	23	your declaration; am I right?
24	Q. You were asked some questions about front plate,	24	A. I believe I say that it's -- that 150 involves
25	top side.	25	the top side, the whole structure that we see here.
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1	Q. I'm sorry, 150 or 115?	
2	A. No, 110.	
3	Q. 110.	
4	A. Sorry.	
5	But the -- your construction of the user	01:09:17
6	facing surface of the front plate, I think is maybe	
7	incorrect, because if a user is using it, as I just	
8	said, he's going to see all the surfaces.	
9	Q. In paragraph 7 of your declaration, that's where	
10	you talk about meaning of front plate, top side, and you	01:09:39
11	have two sentences that criticize defendant's	
12	construction. And the explanation you just gave about	
13	the pill bottle with the label wrapped around it, none	
14	of that is in paragraph 7; correct?	
15	A. Yes. Front plate, top side, simply refers to the	01:09:55
16	top side of the front plate, as distinguished from the	
17	bottom side.	
18	MR. HOGAN: I think we're done.	
19	MR. PEELER: Great, thank you.	
20	THE VIDEOGRAPHER: Off the record at 1:10.	01:10:47
21	(The deposition concluded at 1:10 p.m.)	
22		
23		
24		
25		

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1	REPORTER'S CERTIFICATE	
2		
3		
4	I, CECELIA BROOKMAN, RPR, certify:	
5	That the foregoing proceedings were taken	
6	before me at the time and place therein set forth, at	
7	which time the witness was put under oath by me;	
8	That the testimony of the witness, the	
9	questions propounded, and all objections and statements	
10	made at the time of the examination were recorded	
11	stenographically by me and were thereafter transcribed;	
12	That the foregoing is a true and correct	
13	transcript of my shorthand notes so taken.	
14	I further certify that I am not a relative	
15	or employee of any attorney of the parties, nor	
16	financially interested in the action.	
17	I declare under penalty of perjury under the	
18	laws of Virginia that the foregoing is true and correct.	
19	Dated this day of , 2015.	
20		
21		
22		

CECELIA BROOKMAN, RPR

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